



Guatemala

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Guatemala is a democratic republic with separation of powers and a centralized national administration. The 1985 Constitution provides for universal suffrage to elect a one-term president and a unicameral congress. President Alfonso Portillo of the Guatemalan Republican Front (FRG) took office in January 2000 following a generally free and fair December 1999 runoff election. The FRG maintains a majority (63 seats) in the 113-member Congress. Despite significant pledges, the Portillo administration and Congress took only limited steps to implement the Peace Accords concluded with the Guatemalan National Revolutionary Unity (URNG) guerrillas in 1996. The judiciary is independent; however, it suffers from inefficiency, corruption, and intimidation.

The Minister of Interior oversees the National Civilian Police (PNC), created in 1997 under the terms of the Peace Accords. The PNC has sole responsibility for internal security. There are no active members of the military in the police command structure. In February the President ordered the dismissal of several military officers from positions in the Ministry of Interior. However, the Government frequently ordered the army to support the police, who are ill-equipped and lack resources. The United Nations Verification Mission in Guatemala (MINUGUA) reported that this practice constituted a grave setback for the demilitarization of public security, as called for by the Accords, and that there were no indications that joint operations reduced crime levels. Under existing law, military personnel were subordinated to police control during joint patrols or operations. The Constitution requires the Minister of Defense to be an active duty military officer. On December 29, the President announced a reduction of 162 persons from the Presidential Military Staff (EMP) and committed to further reductions and eventual dissolution of the EMP in 2003, in long-overdue compliance with the Peace Accords. Nevertheless, the Government has steadily increased the EMP's budget, while devoting a lesser amount of resources to its successor organization, the Secretariat for Strategic and Administrative Affairs (SAAS). Although troop readiness levels are low, the overall military budget again surpassed what the Peace Accords call for, leading civil society groups to allege corruption and call for transparency in budget and spending. Some members of the security forces committed human rights abuses. A number of retired military officers with widely acknowledged ties to violent, organized crime continued to have significant influence within the army, police, judiciary, and executive branch.

The private sector-dominated economy grew by approximately 2 percent during the year. The country has a population of approximately 13 million. Coffee, sugar, and bananas are the leading traditional exports, but tourism, apparel assembly, and other nontraditional industries all contribute more than coffee. Significant declines in world prices for coffee adversely affected the economy. Almost 40 percent of the work force and 60 percent of the poor are engaged in some form of agriculture, according to census data. Inflation was 6.3 percent during the year, but the national currency held its value against the dollar. Land distribution is highly skewed. One percent of farms contain more than one-third of all land being cultivated. There is a marked disparity in income distribution and poverty is pervasive, particularly in the large indigenous community. Approximately 83 percent of the population lives in poverty; this figure rises to 90 percent among indigenous people. According to the U.N. Development Program (UNDP), 59 percent of the population lives in extreme poverty. Combined unemployment and underemployment were estimated at 46 percent. Foreign aid is an important part of national income. Remittances from citizens living abroad were the leading source of foreign currency and are growing.

The Government generally respected the human rights of its citizens; however, serious problems remain, and the human rights situation deteriorated in some areas. There were several reports of extrajudicial killings by security forces. There were increased reports of violent deaths, killings, and "social cleansing" in which persons deemed socially undesirable (e.g., gang members, local delinquents, street children, prostitutes, and homosexuals) were murdered. Lynchings and mob violence occurred at a higher rate than in 2001, although the numbers of deaths decreased due to improved police intervention. In some cases, security forces tortured, abused, and mistreated suspects and detainees. Prison conditions remained harsh. In many cases, the prosecutorial and judicial systems were unable to ensure full and timely investigations, fair trials, or due process. Arbitrary arrest and lengthy pretrial detentions continued to be problems. Judges and other law enforcement officials were subject to intimidation and corruption. In May the U.N. Special Rapporteur for Human Rights Defenders noted a significant deterioration in the security of human rights workers. Increased threats against judicial personnel, journalists, witnesses, labor organizers, church activists, and labor unionists heightened public insecurity. The obstruction of justice, threats, and intimidation also were traced to "parallel forces" or "clandestine groups" related to the Government. MINUGUA found that the majority of human rights violations were the result of the failure of the state to investigate and punish those who broke the law. MINUGUA estimated that 15 percent of the violations derived from the obstruction of justice, particularly by police officers whose only

punishment was to be rotated out from assignments where there were problems. Efforts to reform the judiciary continued; however, impunity was systemic.

Most human rights cases remained pending for lengthy periods without being investigated or languished in the courts as defense attorneys took advantage of the inefficient judicial system and filed numerous motions and appeals to delay trials. On October 8, appeals judges annulled the 2001 conviction in the Bishop Gerardi murder case and ordered a retrial. The prosecution has appealed the judges' decision. On September 3, the trial of the alleged intellectual authors of the 1990 murder of anthropologist Myrna Mack began after a 12-year delay. On October 3, the court found former colonel Juan Valencia Osorio guilty of ordering her murder and sentenced him to 30 years imprisonment. The Government made some progress in fulfilling settlements negotiated by the Inter-American Commission on Human Rights (IACHR), such as in the case of murdered journalist Irma Flaquer, but negotiated no new settlements during the year.

Violence and discrimination against women persisted, as did societal abuse of children and discrimination against the disabled and indigenous people. Workers' efforts to form unions and participate in union activities were hindered by ineffective government protection. Child labor and trafficking in women and children were continuing problems. Guatemala was invited by the Community of Democracies' (CD) Convening Group to attend the November 2002 second CD Ministerial Meeting in Seoul, Republic of Korea, as a participant.

Attacks on human rights workers increased during the year. While some of these attacks may have been instances of common crime, the numbers and patterns of the attacks point to a deliberate, systematic effort to intimidate human rights workers. In March, members of a coalition of human rights groups demanded that the Government take measures to ensure the security of human rights workers, investigate and prosecute the material and intellectual authors of the attacks, investigate the existence of clandestine groups and parallel forces linked to state institutions believed to be behind the attacks, and dismantle them. The Secretariat of Strategic Analysis produced a report on the existence of such groups, although other public officials refuted its findings. Human rights groups broke off dialogue, asserting that the Government failed to respond adequately to their concerns and did not accept the President's offer to meet with them. Some government officials made public comments disparaging human rights workers and international observers, and asserted that some of them had fabricated alleged abuses.

In July members of the former Civil Defense Patrols (PAC) demanded payment for services rendered to the army during the armed conflict. The Government's initial agreement to provide indemnification prompted protest from civil society groups and international human rights observers. Opponents argued that compensating groups, many of which had committed documented human rights abuses during the conflict, was an insult to the victims for whom a National Reparations Plan has not been developed.

MINUGUA continued to monitor peace accord implementation and human rights issues. The Government asked the U.N. to extend MINUGUA's mandate. MINUGUA reported that the overall human rights situation deteriorated, and there were increased signs of the participation of clandestine groups in illegal activities linked to employees of the police, military intelligence, justice system, and Public Ministry. These groups appeared to act with relative autonomy, and there was no evidence that they were a part of government policy; however, they operated with impunity. MINUGUA found evidence of civilian and military officers linked to these groups operating both officially and unofficially within the executive and judicial branches.

In March Amnesty International (AI) reported that successive governments had failed to implement the human rights elements of the 1996 Peace Accords. The report alleged that this failure had contributed to new death threats, attacks, and other acts of intimidation against the country's human rights community and others trying to combat impunity. The report claimed that the failure of the legal system to deliver justice has been a major contributory factor to this situation. In August Human Rights Watch (HRW) reported that similar threats and attacks against human rights defenders were carried out by a clandestine group with possible links to both public security forces and organized crime. In September AI reported the continued operation of Civil Defense Patrols despite the provision for their dissolution in the Peace Accords.

A new Human Rights Ombudsman, backed by civil society organizations, was elected in June. A new Attorney General was selected on May 9 and promised to combat impunity and promote respect for human rights. He appointed a special prosecutor for crimes against human rights workers and agreed to appoint a special prosecutor for crimes against the indigenous.

RESPECT FOR HUMAN RIGHTS

Section 1 Respect for the Integrity of the Person, Including Freedom From:

a. Arbitrary or Unlawful Deprivation of Life

There were allegations of politically motivated killings by government agents, and security forces allegedly committed some extrajudicial killings. The Government demonstrated some willingness to arrest and prosecute those responsible; however, in many cases the scarcity of law enforcement resources and a weak prosecutorial system prevented the Government from adequately investigating killings and other crimes or arresting and successfully prosecuting perpetrators (see Sections 1.c. and 1.e.).

MINUGUA reported that it had received 89 allegations of extrajudicial killings between July 2001 and June and had confirmed the validity of the claims in 13 cases and 25 attempted killings. In the previous reporting cycle, July 2000 to June 2001, MINUGUA corroborated 26 killings out of 43 allegations. The report noted a number of extrajudicial killings by members of the police. Many of these cases involved accidental discharges of weapons, drunken misbehavior by on- or off-duty officers, questionable crowd control techniques, or poor judgment by officers who lost control of unstable situations involving angry crowds or persons resisting arrest. In some of these cases, there was effective investigation by both the police Office of Professional Responsibility (ORP) and the prosecutors. In others there was credible evidence of a cover-up by police officers, the ORP, or both, and frequently, inadequate investigations by the prosecutor's office. MINUGUA again noted an increase in the participation of municipal officials, particularly auxiliary mayors, in extrajudicial killings—primarily lynchings.

On January 29, some 20 agents of the now defunct Department of Anti-Narcotic Operations (DOAN) of the PNC entered the community of Chocon, Izabal, allegedly to conduct a drug raid. DOAN agents shot and killed Leonel Diaz Valenzuela and Abinail Cerna Castaneda as they ran from a storefront toward their homes. Other individuals were illegally detained, beaten, and tortured (see Section 1.c.). One individual, who was detained, disappeared (see Section 1.b.). DOAN officials remained in the community, occupying private homes and terrorizing the residents, for well over a day. The officers subsequently gave multiple versions of the events. On February 8, the ORP initiated an investigation and charged 17 agents with a cover-up, altering the scene of a crime, illegal detention, use of unnecessary force, and abuse of authority. Arrest warrants were issued for the 17; one suspect fled before he could be detained. On June 27, the Public Ministry asked the High Impact Court of Chiquimula to open oral proceedings against the 16 captured agents for extrajudicial killing, illegal entry, forced disappearance, altering a crime scene, and abuse of authority. On July 26, a judge ordered the trial to proceed.

In April the IACHR requested that the Government provide police protection to the members of the community after suspicious vehicles were seen in and around Chocon and a witness, Marvin Estuardo de Leon, was murdered. In response, on April 12, the police established a substation in Chocon.

On February 28, a shootout between members of the Criminal Investigative Service (SIC) of the PNC and military intelligence personnel killed two members of the military, and wounded three police officers. Both the then-Minister of Interior and the Director of the PNC maintained that the incident resulted from a lack of communication during a rescue operation in a kidnapping case; however, there were credible reports that the participants in the incident were, in fact, members of a clandestine criminal group attempting to steal the ransom money. According to MINUGUA and press reports, there were indications that the criminals were members of the military. There was also credible information that the police killed one of the military personnel after he had been wounded and surrendered. The crime scene was altered, and evidence was removed. In May a SIC investigator's testimony that he was ordered to modify the official reports implicated the Director of the PNC, the Minister of Interior, and others in the command structure. Further obstruction of the investigation occurred when two military officers linked to the clandestine group were sent abroad.

There have been at least six murders of landless peasants occupying private land in Morales, Izabal municipality since April 2001. Agents associated with landowners are implicated in several of the murders, and three local police at the scene of one of the murders when the crime was committed were charged with "neglecting their duties." There have been few arrests and no convictions in any of these cases.

On April 4, police officers illegally detained Rudy Castillo and Erick Garcia in Sumpango, Sacatepequez. On April 8, the bodies of the two men were found with evidence of torture (see Section 1.c.). The ORP opened an investigation and on April 11, arrested officer Ronald Roca and charged him. Two other PNC suspects remained at large. The victims' families received multiple threats from unknown persons.

On April 27, William Ruano Mayen, the son of Pascual Ruano, a witness in the Bethel Route case in which some 18 individuals were the victims of extrajudicial killings by a group of former military and PAC members during the 1997-99 period, was killed. Evidence suggested links between the perpetrators of Mayen's death and the Bethel Route killings; however, police made no arrests in this case.

There was no progress in the investigation of the 2000 deaths of Oscar Guzman Garcia and Jose Castaneda Alvarez, who had been detained by men wearing military uniforms in a jeep marked "ZM12" (for Military Zone 12).

There were no known reports of deaths of detainees or prisoners while in police custody during the year, although most cases from previous years went unresolved, such as the 2000 death of Luis Armando Colindres while in police custody or those of the prisoners killed during jailbreaks and prison riots in 2001.

Most cases from past years remained unresolved, such as the killings of Constitutional Court president Epaminondas Gonzalez in 1994, former presidential candidate Jorge Carpio in 1993, and Gerardi witness Luis Garcia in 2001. There was some progress during the year in cases of past extrajudicial killings by members of the security forces. In many other cases, there was little or no progress, often due to the tactics of defense attorneys who frequently took advantage of a legal system that tolerates the filing of dilatory motions to derail impending trials against their military clients.

On September 3, the trial of Edgar Godoy Gaitan, Juan Valencia Osorio, and Juan Oliva Carrera, alleged intellectual authors of the 1990 murder of anthropologist Myrna Mack Chang, began. However, various appeals by the defense, including one questioning the legality of documents submitted as evidence, remained pending. On the first day of the trial, the president of the

court ordered the defendants' imprisonment during the trial proceedings. During and leading up to the trial, witnesses, prosecutors, and at least one judge reported receiving threats (see Section 1.e.). In August unknown persons fired shots outside the home of Roberto Romero, attorney of private plaintiff Helen Mack, and Romero received threatening phone calls. Also in August, the IACHR ordered the Government to take necessary steps to protect Helen Mack and members of the Myrna Mack Foundation. On October 3, the court found former colonel Juan Valencia Osorio guilty and sentenced him to 30 years imprisonment.

In November the trial of the Mack case began in the Inter-American Court of Human Rights. The Court had agreed in 2000 to hear the case due to excessive delays of the application of justice in the Guatemalan courts.

On October 8, the Fourth Appeals Court annulled the 2001 conviction and sentencing of three military officers to 30-year, noncommutable sentences for the 1998 murder of Bishop Juan Gerardi, the Coordinator of the Archbishop's Office on Human Rights (ODHAG), and ordered a retrial. At year's end, the defendants remained in custody awaiting a new trial. The prosecution appealed the judges' decision.

MINUGUA continued to confirm multiple complaints of threats, acts of intimidation, and surveillance by those involved with the case (see Sections 1.e. and 4).

In February the Public Ministry prosecutor, Mario Leal, announced that his office had discovered that some of the 183 individuals listed in the "Military Diary" were still alive. Leal indicated his intent to call 6 witnesses to give testimony in connection with 75 criminal cases filed by the victims' families against the military.

In June former PAC members staged a mass protest in the province of Peten, occupying roads, an airport, and an oil refinery and detaining tourists, while demanding cash payments for services rendered to the army during the armed conflict. The Government's conciliatory response and promises to consider compensation provoked outrage among civil society groups, who pointed out that the Government had not yet committed to a National Reparations Plan for victims of the armed conflict, a central recommendation of the Historical Clarification Commission (CEH). As groups of former PAC members across the country joined in the demands, international human rights observers spoke out against rewarding the victimizers. The CEH held the PACs responsible for 18 percent of the massacres of unarmed civilians during the conflict.

Progress in some notorious massacre cases stalled at year's end. In August, the Inter-American Court of Human Rights agreed to hear the case of the 1982 massacre in Plan de Sanchez, Baja Verapaz, in which the army and PAC members killed 268 people. The Government has not complied with the August 2000 settlement, including economic reparations, with the survivors and the victim families.

Despite a September 2001 Supreme Court order to proceed with the trial of five guerrillas for the 1998 massacre in El Aguacate, Chimaltenango, there was no progress in the case.

Judicial proceedings in the 1995 Xaman massacre case remained suspended due to multiple appeals pending before the Constitutional Court.

The case of the 1982 military massacre at Dos Erres, Peten, remained stalled in a Guatemalan court by 26 motions of appeal. Although the Government made a reparation payment to the victims' survivors in December 2001, further obligations under the 2000 amicable settlement remained unfulfilled.

Prosecutor Mario Leal continued to interview witnesses and conduct investigations in connection with the lawsuits filed in 2000-2001 on behalf of communities whose citizens were massacred by government security forces. Leal has interviewed more than 100 witnesses and visited 4 massacre sites. The suits allege crimes, including genocide, committed by the high command of former President Fernando Romeo Lucas Garcia and that of former "de facto" president and current President of Congress, retired General Efraim Rios Montt.

Exhumations of clandestine cemeteries continued throughout the year, although work was set back by death threats, and exhumation teams reported that some communities lost their will to participate (see Section 4). Forensic scientists have exhumed more than 2,000 remains from more than 280 sites since exhumations began in 1992. Most of the bodies recovered have been those of victims of military or paramilitary killings in the early 1980s. Forensics groups use the information obtained from the exhumations to verify eyewitness reports of massacres—of which the CEH recorded 669—and to determine, at least in general terms, who might have been responsible. Forensic research and DNA testing have identified some of the remains and have been used in some criminal cases.

In July Families of the Disappeared in Guatemala (FAMDEGUA) began to exhume remains of 16 guerrilla fighters killed by the army in 1990-92 and interred in common graves in Antigua, Sacatepequez. The exhumations were carried out in connection with a program that assists families seeking children lost during the conflict (see Section 1.b.). In August the Forensic Anthropological Foundation of Guatemala (FAFG) began to exhume several clandestine cemeteries around Rabinal, Baja Verapaz. Community records show more than 800 persons were killed in a massacre in 1981. Although the team only found 51 skeletons, including women and infant children, the majority incomplete, there was evidence that the site had been disturbed. During the year, FAFG teams also worked in Xiquin Sinai and Hacienda Vieja, Chimaltenango; Finca El Zapote, Alta Verapaz;

and Inebe and Pacux, Baja Verapaz. By year's end, they had excavated 58 different sites and exhumed 417 remains.

In December 2000, a Spanish court decided not to hear a criminal complaint filed in 1999 by Rigoberta Menchu against Rios Montt, former President Fernando Lucas Garcia, and former de facto President Oscar Humberto Mejia Victores for human rights abuses including genocide, torture, and terrorism committed during the 36-year internal conflict. Menchu petitioned the Spanish Supreme Court in March 2001 to overturn the ruling, and in February the court agreed to consider her petition. A decision was pending at year's end.

There were plausible allegations of politically motivated killings by nonstate actors during the year, with only limited willingness on the part of prosecutors to investigate such murders. In some of these cases, evidence was not sufficient to conclude whether the killing was politically motivated.

On February 15, Cesar Rodas, a witness in the Government Printing Office case (see Section 2.b.), was shot and killed while walking toward his parked car. Although Rodas carried cash and other items of value, they were not taken. The police interviewed some 20 witnesses to the crime, but were not able to establish a motive. On March 7, the IACHR ordered the Government to provide police protection to five of the witnesses, who reported being followed and threatened by unknown individuals.

On March 14, four armed men shot and killed Jorge Rosal, a regional leader of the Patriot Party, as he left the party's Guatemala City headquarters. The Ministry of Government quickly discounted a political motive, even though nothing was stolen from Rosal's person. A month before, the party's founder, retired General Otto Perez Molina, had registered the new opposition party. Four days before the shooting, Rosal had participated in a march with other members of the Patriot Party involved in the Civic Movement, a political association founded to protest government corruption (see Section 2.b.). The ensuing investigation produced no suspects or motive.

On April 29, Guillermo Ovalle, an accountant at the Rigoberta Menchu Foundation, was shot and killed while having lunch in a cafeteria frequented by the staff of various human rights NGOs. Police immediately captured two suspects identified by witnesses at the scene of the crime. Nearly 4 months after the incident, the prosecutor had not completed various pretrial proceedings, such as the identification of the suspects in a line-up, due to dilatory tactics employed by the defense (see Section 4).

During the year there were several killings characterized as acts of "social cleansing" in which persons deemed as socially undesirable were murdered. Unknown individuals killed at least five male homosexual sex workers (see Section 5). Police did not identify any suspects. Street children continued to be the victims of violence by unknown persons (see Section 5).

There was no progress in the investigation of the 2000 and 2001 attacks on the son and daughter of retired General Otto Perez Molina and the killings of Patricia Castellanos Fuentes de Aguilar and Francisco Aguilar Alonzom.

There was no progress in the investigation of the May 2001 killing of Sister Barbara Ann Ford. The prosecutor assigned to the case was slow to investigate leads and was reluctant to cooperate with MINUGUA. A motive has yet to be established.

MINUGUA reported 48 lynching cases involving 104 victims during the year. In 14 cases, 20 victims died. While the number of reported lynchings increased in comparison to 2001, the numbers of deaths decreased, in large part due to the improved efforts of the police. In 2001 police intervention saved lives in 40 out of 75 cases recorded. MINUGUA continued to verify cases that were planned or premeditated events, some of which had the participation of municipal officials, local leaders, or former members of Civil Defense Patrols. The large majority of the attacks took place in heavily indigenous, rural areas that suffer from the lowest rates of human development and poverty, and where the justice system is least accessible. MINUGUA concluded that the government's weak response to crime fueled partial public acceptance for lynchings.

Since MINUGUA began tracking individual lynching cases in 1997 and up until January, it recorded a total of 421 cases, resulting in 215 deaths. Less than 10 percent of the perpetrators of these lynchings have been tried and sentenced, and convictions were handed down in only 24 cases. In March 2001, a judge issued 41 arrest warrants for the alleged ringleaders of the 2000 lynching of 8 men at a roadblock near Xalbaquiej, Chichicastenango. The orders did not arrive at police headquarters until October 4, 2001, were subsequently sent to the Quiche station on October 22, 2001, and were finally delivered to the substation in Chichicastenango in February, almost a year later. By year's end, the police had not arrested anyone.

Although in most cases the justice system has been slow to investigate, convict, and imprison perpetrators of lynchings, the Government has demonstrated increased willingness to prosecute lynching offenders. In February a prosecutor formally charged 22 individuals with illegal detention, kidnapping, murder, illegal inhumation, and resisting arrest in connection with the October 2001 lynching of Juan Cuc, Jose Ical Xip, and Rene Alfredo Cho. On December 11, a court in Coban, Alta Verapaz, found Alfredo Caal, Esteban Quej, and Celio Ortiz guilty of the March 2001 lynching of Alvaro Hugo Martinez Perez, a justice of the peace in Senahu, Alta Verapaz, and sentenced them to 52 years in prison.

There were several unsuccessful attempts to lynch local judicial officials. On July 9, inhabitants of Nebaj, Quiche, took Judge Griselda Yoc hostage. Yoc was taken to the town plaza, where the crowd demanded that she explain the status of a case against a member of the community. On July 19, a mob stormed the justice center demanding the release of a second man

whom Judge Yoc had ordered arrested for invasion of private property. The Supreme Court closed the center on July 23. Yoc and Juan Tul, a Justice of the Peace who had also been threatened, were transferred. The center remained closed for 10 days.

b. Disappearance

There were no reports of politically motivated disappearances during the year; however, there was at least one reported disappearance during detention by security forces.

On January 29, DOAN agents, conducting a drug raid in Chochon, Izabal, illegally detained Humberto Orellana Sis. Orellana Sis subsequently disappeared and his whereabouts remain unknown (see Section 1.a.).

On May 3, a human rights worker was abducted and tortured by unknown men, who made cuts on his abdomen with a knife while questioning him about his work (see Section 4).

Disappearances in high-profile cases from past years remained unresolved at year's end. There was no progress in the investigation into the 2000 disappearance of University of San Carlos professor and social activist Mayra Gutierrez, and the case remained pending before the IACHR. There was also no progress in the disappearance case of Mynor Pineda Augustin following his 2000 arrest for kidnapping.

In June the National Commission for the Search for Disappeared Children, created by civil society organizations in June 2001 after the Government failed to follow the recommendation of the Historical Clarification Commission to create such a body to search for children who had disappeared during and since the armed conflict, released a report on its first year of work. The Commission documented 425 cases of disappeared children and facilitated 17 family reunifications. The Commission reported that the primary obstacle to its work was the military's refusal to provide access to its records on captured children. In February the U.N. Special Rapporteur for Children in Armed Conflicts recommended that the Commission be officially recognized and enjoy formal participation by the Government (see Section 4).

In June 2001, groups associated with the National Human Rights Coordinator filed 5,000 habeas corpus briefs on behalf of individuals who disappeared between March 6, 1965, and October 19, 1993. The briefs were processed immediately by the Supreme Court and sent to the sentencing court to be investigated; however, little progress was made.

In February the Inter-American Court for Human Rights ordered the Government to locate, exhume, and relinquish the remains of guerrilla leader Efraim Bamaca Velasquez, who disappeared in 1992, publicly acknowledge responsibility for his death, and pay \$498,000 (3,859,500 quetzals) in damages to his survivors.

The appeal of the September 2001 decision of the trial court to dismiss, for lack of sufficient evidence, the case against retired General and former de facto president Oscar Mejia Victores for his alleged role in the 1984 disappearance of Fernando Garcia continued at year's end.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The Constitution provides for the integrity and security of the person and prohibits physical or psychological torture of prisoners; however, there were credible reports of torture, abuse, and other mistreatment by members of the PNC during the year. These complaints typically involved the use of excessive force during arrests, interrogations, or other police operations. SIC detectives continued to torture and beat detainees during interrogation to obtain forced confessions, as did DOAN agents in one case. The Government and the PNC showed little willingness to investigate, prosecute, or otherwise punish officers who committed abuses. The PNC transferred some cases of alleged torture to the Prosecutor's Office. There were a significant number of murder victims whose bodies demonstrated signs of torture or cruel treatment (see Section 1.a.).

In its 13th Report on Human Rights, MINUGUA reported receiving 551 complaints of torture, cruel, inhuman and degrading treatment, and confirmed 270. The police, especially the Criminal Investigative Service (SIC), committed the majority of violations. While complaints of cruel, inhuman, and degrading treatment by police increased by 128 percent, complaints of torture by police declined by 57 percent. The police sometimes punished the use of excessive or illegal force by officers; however, they more often merely transferred offenders to a different location. In several cases, there was credible evidence that police officers and their superiors altered documentation, falsified evidence, bribed and intimidated victims and witnesses, or otherwise obstructed the investigation and prosecution of police misconduct.

On January 29, DOAN agents unlawfully detained Porfirio Sanchez Grijalba, Carlos Humberto Padilla, and Elio Hernandez Sanchez during an alleged drug raid in Chocon, Izabal. All three were beaten. A hood containing insecticide was placed over Sanchez's head while he was interrogated and Hernandez's testicles were crushed (see Section 1.a.).

On February 8, a PNC officer raped two women who were detained in a police station in Villa Nueva. On February 13, two other women reported that they had been asked for sexual favors by officers in the same station in exchange for the alteration of the report detailing their crime. They reported that when they refused, they too were raped. The ORP did not open an investigation, and the offending officers were transferred to another station.

On April 4, the corpses of two men who were illegally detained by PNC officers were found, showing signs of torture (see Section 1.a.).

On May 3, a human rights worker was abducted and tortured by unknown men, who made cuts on his abdomen with a knife while questioning him about his work (see Section 4).

On September 6, the decapitated body of Manuel Garcia de la Cruz, member of National Coordinator of Widows (CONAVIGUA), a human rights group, was found in Joyabaj, Quiche. The police have not identified any suspects.

Casa Alianza, an NGO, reported that the number of incidents of killing and abuse of street children increased (see Sections 1.a. and 5).

During the year, groups of peasants forcibly occupied more than 60 farms in attempts to gain land. In most cases eviction orders were not enforced. In some cases, evictions were carried out peacefully. There were also isolated reports of excessive force by the police. On March 8, a police officer was accused of killing Jose Benjamin Perez in Morales, Izabal (see Section 1.a.).

Corruption continued to be a major problem, and there were credible allegations of involvement by individual police officers in criminal activity, including kidnappings. Rather than discipline its officers, the police often just transferred them to a different part of the country. Transfers are a common practice and are used to avoid personnel problems, corruption, and questions of mistreatment of detainees. Impunity for police who commit abuses remained a serious problem.

All PNC members were required to meet minimum education requirements and pass an entrance examination. There were also screening procedures to detect suspected human rights violators and officers involved in criminal activities. Beginning in January, new recruits were required to complete an 11-month training course, including 60 hours of human rights training and 20 hours of ethics, before entering on duty. Previously training lasted 6 months and incorporated 35 course hours on human rights. The military also made efforts to incorporate human rights training into its curriculum. In March the army sponsored a Regional Human Rights Seminar with other militaries in Latin America to discuss performance measures for human rights standards.

In November 2001, the Government reached the Peace Accords goal of putting 20,000 police on active duty. At year's end, PNC officers numbered 21,180, representing 1 police officer for every 2,200 people. Representation outside of the capital is improving; however, approximately two-thirds of those police districts remained 60 to 75 percent staffed.

During the year several human rights NGOs and the Institute of Comparative Studies in Penal Science formed the Council of Monitoring and Support to Public Security to oversee the progress of reforms to the PNC. In July it released its first report, which stated that the principal problems facing the police were a lack of professionalization, military influence, a lack of resources, and a lack of internal controls. The Council reported that the constant turnover in leadership, including both the director of the PNC and the Minister of Interior, hampered continuity in policy and generated insecurity within the institution. A lack of basic supplies such as fuel and parts for vehicles, radios, and uniforms, further inhibited its effectiveness. During the year, the Government transferred funds from the PNC to both the Ministry of Defense and the EMP, while the Police Academy suffered from a severe lack of financial resources.

In 1998 the PNC accepted some 60 police candidates from indigenous communities in the Ixil region—approximately 30 of whom graduated on their first attempt—to ensure that PNC personnel in those communities would be proficient in the local language and able to operate effectively in those communities. According to MINUGUA, approximately 7 percent of PNC officers speak an indigenous language. More officers who speak an indigenous language have been assigned to a town where this skill can be put to use. Approximately 75 percent now work in the geographic area of their particular linguistic competency.

According to the Interior Ministry, there were more than 60,000 private security agents working in the country. Many firms have not completed legal requirements and are owned by ex-soldiers and policemen. Their forces outnumbered the police. The Ministry has done little to investigate this issue, despite its jurisdiction over the regulation of private security firms. In February, a court sentenced a private guard to 30 years' imprisonment for the 2000 killing of a father and son.

The ORP performs internal investigations of misconduct by police officers. Despite greater numbers of police officers on duty throughout the country and less public apprehension about filing complaints against the police, the total number of such complaints remained roughly the same as the previous year. The ORP has a strong corps of investigators and has shown a considerable degree of improvement in professionalism. However, their independence and effectiveness has been hampered to some degree by the lack of support from the PNC leadership. There were isolated cases in which ORP investigators appeared to participate in cover-ups of police misconduct. The ORP reported that in 2001, it received 1,693 complaints, including 29 cases of homicide, 131 cases of abuse of authority, 136 cases of threats, 201 cases of robbery, 7 cases of kidnapping, 63 cases of unlawful detention, and 150 cases of corruption. The ORP received 1,581 complaints in 2000, including 43 of homicide, 222 of abuse of authority, 104 of robbery, 141 of corruption, 108 of improper conduct, 107 of threats, and 72 of illegal detention. Cases in which sufficient evidence suggested that criminal acts were committed were forwarded to the Public Ministry for further investigation and prosecution. In 2001 the PNC fired 467 officers. In 2001 the ORP closed 878 cases, compared to 870 cases in 2000. The investigators found 35 percent of officers culpable and exonerated 65 percent.

No active members of the military serve in the police command structure. However, a 2000 law allows the Government to employ the army to support temporarily the police in response to the rising rates of violent crime. Under the law, military personnel are not clearly subordinated to police control during joint patrols or operations. In a May publication on the military's compliance with the Peace Accords, MINUGUA noted that in some cases the army conducted patrols independently and ordered district police chiefs to submit written reports of their activities to local base commanders. The practice put the institutional development of the PNC and judicial due process at risk and was a serious setback for the demilitarization of public security as stipulated by the Accords. MINUGUA reported that there was no evidence that crime levels decreased as a result of the initiative.

On February 28, a shootout between members of the SIC and military intelligence personnel during an alleged joint operation left two dead. The subsequent investigation revealed alteration of official reports, disturbance of the crime scene, and links between participants and clandestine criminal networks (see Section 1.a.).

In May MINUGUA noted that excessive physical punishment continued to play a role in the training methods of both the Kaibil army special forces unit and the Adolfo V. Hall military academy.

Prison conditions remained harsh but generally not life threatening. The prison system continued to suffer from a severe lack of resources, particularly in the areas of prison security and medical facilities. In September the prison system reported that its capacity nationwide was 6,870; however, the prison population at the time was 7,103. Fifty-five percent of the prison population was not serving prison terms but was being held in pretrial detention. Pretrial detainees often were not separated from convicted criminals. However, in June the Director of the Penitentiary System announced renewed efforts to ensure their separation. Many were released either on good behavior or because they never were sentenced. Some institutions were overcrowded, but the Government made efforts to build new facilities and in August opened a maximum security prison in Culiapa. The new facility featured a recreation area, a private visiting area, and medical and mental health clinics. The guards assigned to the facility were recent graduates of the School for Prison Studies, created in 2001 to professionalize the prison system's staff. By year's end, 955 guards had graduated from the program. The average guard-to-prisoner ratio is 1 to 12.

On December 23 and 24, inmates at Pavoncito prison staged violent protests over the quality of food, the lack of visitation rights, and poor living conditions. The prisoners eventually took control of the prison. During the tumult, 14 prisoners were killed and 50 were wounded. Practically all of the killings were committed by rival groups of prisoners. NGOs allege that a pre-holiday roundup of youths for pre-trial detention contributed to the rioting by disrupting the balance of power between youth and more established gangs in prison.

Prisoners continued to complain of inadequate food and medical care. Corruption, especially drug-related, was widespread. Prison officials reported frequent escape attempts and other manifestations of prisoner unrest. The military continued to provide perimeter security for various prisons, as it has done since 1998.

In June 2001, 78 prisoners escaped from the maximum-security prison facility in Escuintla. More than a year later, the authorities had recaptured 53; 11 were killed, often under questionable circumstances; and 14 others remained at large. Although the deaths of four of the escapees were attributed to rival gangs, numerous activists questioned whether the killings were instead an act of social cleansing by authorities or parastatal elements.

According to press reports, the organizers of the June 2001 prison break had bribed prison officials. On March 4, the trial of 20 guards, 2 wardens, the director, and the vice-director of the prison for allegedly collaborating with the breakout began. It lasted more than 2 months as judges heard the testimony of more than 80 witnesses. The director of the prison implicated high-level authorities in the prison system as well as the ex-Minister of Interior, Byron Barrientos, who was called for questioning but not charged with any crime. On May 23, the Criminal Court of Escuintla sentenced the director and vice director, the wardens, and a commander of the guard forces to five-year, commutable sentences. The remainder were absolved. In June the prosecutor asked for a retrial after various witnesses retracted their statements.

In the wake of the prison break, a Consultative Commission on the National Penitentiary System was established to analyze the existing system and develop recommendations for improvements. The Commission's final report found conditions to be very poor, especially for special needs groups such as the sick, elderly, or disabled. It found that prisoners often take control inside prisons and run criminal rings while incarcerated, and that guards are often corrupt and poorly trained. It submitted reform proposals to Congress that would allow every prisoner to work and receive remuneration, provide educational opportunities, form libraries, improve hygiene, strengthen security, and improve infrastructure. During the year the Government made some progress in improving access to education and skills training for inmates.

The 401 female prisoners in the penal system generally are held in facilities separate from men. However, the conditions are equally poor. The Government permitted access to prisons by family members. Immigration detention facilities do not always keep female detainees separate from the male population.

Children are held in separate detention facilities. According to a 2000 MINUGUA report, there are only five juvenile delinquent facilities in the country, and approximately 39 percent of the children housed in these facilities have sought protection from the state and have committed no offense.

In May the Constitutional Court ordered that a date be set for the implementation of the version of the Minors' Code proposed by the FRG-led Congress to supplant the outdated 1979 Code presently in force (see Section 4).

The vast majority of juveniles detained by authorities are between 16 and 18 years old; 84 percent are boys. The Secretariat for Social Welfare runs four Centers for the Treatment and Orientation of Minors: one for girls and three for boys. Officials do not separate adequately those who have been convicted and are serving a sentence from pre-trial detainees. Those who are serving time for minor infractions are often held with those who have committed serious offenses. Adequate sanitation, hygiene, and nutrition are persistent problems within the under-funded system.

The Government permits prison visits by independent human rights monitors, public defenders, and religious groups.

d. Arbitrary Arrest, Detention, or Exile

The law prohibits arbitrary arrest and detention. However, there were frequent credible reports of arrests without judicial warrants, illegal detentions, and failure to adhere to prescribed time limits in legal proceedings. In practice, arresting officers frequently fail to satisfy legal requisites, especially with minors. The Constitution requires that a court-issued arrest warrant be presented to a suspect prior to arrest unless he is caught in the act of committing a crime. Police may not detain a suspect for more than 6 hours without bringing the case before a judge. Once a suspect has been arraigned, the prosecutor generally has 3 months to complete his investigation and file the case in court or seek a formal extension of the detention period. The law also provides for access to lawyers and bail for most crimes.

There are no comprehensive, reliable data on the number of arbitrary detentions, although most accounts agree that security forces routinely ignored writs of habeas corpus in cases of illegal detention. In its 12th report, MINUGUA investigated 110 cases of illegal or arbitrary detention, and confirmed 88 of them. These figures reflected an increase over the previous reporting cycle, in which MINUGUA investigated some 31 cases of illegal or arbitrary detention, and confirmed 23.

A study of the due process of minors in detention found that 95 percent of arrests of minors are without a warrant. Of these cases, 87 percent never go to trial. When the court system analyzed arrest warrants for juveniles, it found such reasons as having tattoos or scandalous behavior in public.

According to the registry maintained by the prison system, there were a total of 8,077 prisoners throughout the country. Of those, 3,092 had been sentenced and the rest awaited trial. The law sets a limit of 3 months for pre-trial detention; however, longer detentions still occurred routinely. Prisoners often were detained past their legal trial or release dates, sometimes for years. Prisoners were not released in a timely fashion after completing their full sentences due to the failure of judges to issue the necessary court order or other bureaucratic problems.

The Constitution prohibits exile, and it is not practiced as a matter of policy. However, self-exile is a very common response by citizens who feel threatened or intimidated.

e. Denial of Fair Public Trial

The Constitution provides for an independent judiciary; however, the judicial system often fails to provide fair trials due to inefficiency, corruption, insufficient personnel and funds, and intimidation of judges, prosecutors, and witnesses. The system's response to human rights violations, as well as to general criminal activity, has been inadequate. Many high-profile human rights cases remained pending in the courts for long periods as defense attorneys employed numerous dilatory appeals and motions. Courts sometimes took months to resolve even patently frivolous appeals. There were numerous credible allegations of corruption, manipulation, and intimidation in the judiciary. Intimidation and killing of witnesses continued to be a problem; there were credible reports of the killing and threatening of witnesses (see Section 1.a. and 1.c.).

Judges and prosecutors continued to receive threats designed to influence pending decisions or to seek reprisal for past decisions. Death threats and intimidation of the judiciary were common in cases involving human rights violations, particularly when the defendants were active or former members of the military, military commissioners, or former members of Civil Defense Patrols. Witnesses are often too intimidated to testify. With relatively few exceptions, plaintiffs, witnesses, prosecutors, and jurists involved in high-profile cases against members of the military reported threats, intimidation, and surveillance. Prosecutors, judges, and witnesses associated with the Gerardi case reported continued threats, as did witnesses, prosecutors, and at least one judge in the Mack case (see Section 1.a.). In July, unknown individuals fired shots into the office of Flor de Maria Garcia, who served as a judge in the Gerardi case. Those involved in government corruption cases were also targeted, as in January when the SIC uncovered a plot to assassinate the prosecutor handling a case implicating former Minister of Interior Byron Barrientos and several vice-ministers.

Many judges are denied health and life insurance because the threats and intimidation that they receive make their jobs too dangerous. The Government allocated more resources to the judiciary's physical security, including providing protective details for a judge and members of the prosecution team in the Mack case (see Section 1.a.). In July the Supreme Court announced the creation of a permanent unit of 160 bodyguards to provide security for threatened judges and magistrates. By September the Public Ministry had spent approximately \$195,000 (1.5 million quetzals) on its witness protection program. In June the Association of Judges and Magistrates announced that 51 judges had been threatened during the first 6 months of the year. By

July 31, the Special Prosecutor for crimes against judicial personnel had been assigned 150 cases; however, the unit lacks the personnel and resources necessary to carry out its mission.

In March the U.N. Special Rapporteur on the Independence of Judges and Lawyers, Param Cumaraswamy, submitted the report of his May 2001 fact-finding mission to the U.N. Commission on Human Rights. While the report applauded efforts to professionalize the judiciary, it noted that harassment and threats to justice workers had increased and that adequate steps to ensure their security had not been taken, thereby undermining their independence.

On April 15, an office in the headquarters of the Institute for Public Penal Defense was broken into and ransacked. The incident occurred while the Advisory Board was in session on a different floor of the building. The perpetrators stole case processing computers, other electronic equipment, and paper files, and urinated on desks and furniture before leaving the office.

There were several unsuccessful attempts to lynch local judicial officials (see Section 1.a.).

The judiciary is composed of the Supreme Court, appellate courts, trial courts, and Probable Cause Judges (who function like grand juries). There also are courts of special jurisdiction, such as labor courts and family courts, which also are under the jurisdiction of the Supreme Court. The Constitutional Court is independent of the rest of the judiciary. There are several community courts in indigenous rural areas.

The Constitution requires that Congress elect all Supreme Court and appellate court magistrates every 5 years from lists prepared by panels composed of active magistrates, representatives of the bar association, law school deans, and university rectors.

The Criminal Procedures Code provides for the presumption of innocence, the right to be present at trial, the right to counsel, plea bargaining, and the possibility of release on bail. Trials are public, allowing victims, family members, and human rights groups to observe the process. Three-judge panels render verdicts. The Criminal Procedures Code introduced oral trials; however, only those attorneys who have graduated since 1994 have had any real training in oral trials. In 2001 an innovative pilot project was initiated in the municipalities of Zacapa and Quetzaltenango to present pretrial motions orally, rather than in writing, and the Supreme Court approved the extension of the project throughout the country. The code also provides for language interpretation for those who require it. However, in practice this provision is rarely honored due to budgetary and other constraints (see Section 5). During the year, there were six interpreters, six bilingual public defenders assistants, and four public defenders who spoke indigenous languages throughout the country working with the Institute for Public Defense. The Prosecutor's Office, which is independent of the executive branch, may initiate criminal proceedings on its own or in response to a complaint. Private parties may participate in the prosecution of criminal cases as co-plaintiffs. Lengthy investigations and frequent procedural motions by both defense and prosecution often lead to excessively long pre-trial detention (see Section 1.d.). Courts showed little willingness to exercise discretion in dismissing frivolous or patently invalid motions. As a consequence, parties continued to use such motions as delaying tactics, frequently holding up trials for several months or even years.

Inefficiency, lack of resources, and corruption in the courts, Public Ministry, and police continued to impede the proper functioning of the judicial system and to undermine the right to due process. In March magistrates from the Supreme Court threatened to take legal action if Congress did not approve an increase of approximately \$23 million (180 million quetzals) in the budget for the year. The Court argued that by not authorizing sufficient funds for the functioning of the judicial system, Congress violated the Constitution. The authorized budget was almost \$13 million (100 million quetzals) less than in 2001. Several judges alleged that the cuts were retribution for Court decisions that permitted legal action against several FRG deputies. In May an agreement was reached with the Ministry of Finance to transfer the needed funds.

The Supreme Court continued to seek the suspension of judges and to conduct criminal investigations for improprieties or irregularities in cases under its jurisdiction. In 2001 the Discipline Unit investigated 503 cases of wrongdoing. As a result of those investigations, 14 judges were sanctioned, 32 were suspended, and 4 were sanctioned with the recommendation that they be removed. Of the sanctions, 1,159 were findings of impropriety, 66 were warnings, 9 judges were fired, and 1 was suspended. Magistrates received 13 findings of impropriety.

The Public Ministry has been hampered in its efforts to investigate crimes and prosecute offenders by inadequate training and equipment, excessive caseloads, and insufficient numbers of qualified investigators. Prosecutors remained susceptible to intimidation and corruption. In addition, the law's failure to delineate the responsibility for investigating crimes to either the PNC or the Public Ministry led to continued infighting and competition between these organizations, as well as the duplication of investigative efforts. On May 9, Carlos de Leon was appointed as new Attorney General and head of the Public Ministry. De Leon argued that a lack of funding was the source of most of the Ministry's deficiencies. In August he announced that he would ask Congress to increase the Ministry's budget by 60 percent in 2003.

The 1999 Law on Judicial Careers established a system to regulate the income, terms of office, promotion, training, disciplining, and other activities of judges and magistrates. It provided for a mandatory 6-month training course for all newly appointed judges. The panel reviewed numerous cases and issued sanctions ranging from letters of reprimand to firing. The Council is responsible for selecting judges as well as disciplining them in accordance with the law's criteria for sanctions.

In March the Disciplinary Unit suspended two judges from the 14th Appellate Court of Coban for releasing two captured drug

traffickers on bail. The Unit found the judges guilty of ineptitude, not corruption, despite allegations that the suspects had paid approximately \$195,000 (1,511,250 quetzals) for their liberty. The judges were suspended for 3 months without pay.

In April the Judicial Career Council reviewed the performance of 66 judges who were hired in 1996 and were required under the 1999 law to be evaluated to enter the Judicial Career system at the termination of their contract. Seventeen contracts were not renewed.

In cooperation with foreign donors, the Government continued its efforts to reform the judicial system. Twelve justice centers, which bring together judges, public defenders, prosecutors, private law practitioners, police, municipal representatives, and civil society in a team approach to dispute resolution and problem solving, continued to provide efficient public service. Clerk of Court offices, established in 1999, streamlined case processing, increased transparency, improved customer service, and virtually eliminated the phenomenon whereby one could bribe a court official to "lose" a case file. An analogous system was inaugurated in Guatemala City in the Prosecutor's Office Case Intake Unit. A modernized intake system reduced the average waiting time for filing a complaint from several hours to approximately 10 minutes. In 2001 a new Prosecutor's Office Victim's Unit also was inaugurated in the capital, with doctors and nurses on call 24 hours a day to assist rape and other crime victims and to gather evidence for their cases (see Section 5). These units have been extended to every department of the country.

Despite some progress, much remains to be done to reform the judiciary and establish effective rule of law, as mandated by the Peace Accords. The National Commission for the Strengthening of Justice, created following the Peace Accords, announced a strategic plan in 2001 to refine the roles of justices of the peace, institute reforms to the penal code, and reduce duplication of work in the criminal labs run by the police, the Public Ministry, and the judiciary. Much of the plan has yet to be implemented.

There were no reports of political prisoners.

f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

The Constitution provides for the inviolability of home, correspondence, and private documents. However, allegations persist that the authorities sometimes disregard these provisions. Elements of the military, specifically the EMP and the Directorate of Military Intelligence, reportedly continued to monitor private communications. During the year, most human rights organizations reported surveillance or telephone anomalies that suggested wiretapping (see Section 4). In August the recently elected Human Rights Ombudsman also discovered that his office was being monitored. Although authorities announced their intent to investigate, no culprit was named. There was no progress in the Public Ministry's 2001 case against Colonel Juan Valencia Osorio, former director of security of the EMP, for spying. On October 3, a court found Valencia guilty of ordering the murder of Myrna Mack in 1990 and sentenced him to 30 years' imprisonment (see Section 1.a.).

The military continued to honor the 1994 presidential order to suspend all conscription, including forced recruitment, as the armed forces found it relatively easy to recruit young male volunteers from impoverished areas using pay and education incentives.

During the year, there were several reported cases of government employees being forced to make contributions to the ruling party, the FRG, as well as become party members, to obtain or keep their jobs. For example, on February 1, 14 road workers were notified that their work contracts were cancelled for refusing to make a monthly payment of approximately \$13 (100 quetzales), or two and one-half days' wages, to support the FRG.

Section 2 Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The Constitution provides for freedom of expression, and the Government generally respected this right in practice; however, there were numerous credible reports that members of the press were targets of anonymous threats and intimidation. Self-censorship was common and took the form of individual decisions not to speak out or testify or media decisions not to report certain issues.

On August 16, the scheduled trial of Bruce Harris, director of Casa Alianza, was suspended after the 12th Criminal Court excused itself from hearing the case. Attorney Susana de Umana filed a defamation case against Harris in 1997 after the results of an investigation conducted by the Attorney General into anomalies in 18 adoption cases, one of which de Umana had processed, were made public. Harris filed several appeals, but in 1999 the Constitutional Court ruled that Harris did not enjoy the right to free speech, as he was not a journalist. The U.N. High Commissioner for Human Rights, Mary Robinson, expressed concern over the progress in the case and the apparent restriction on freedom of expression.

In addition to regular and open criticism of government policies, the print media publicized communiques from human rights organizations, unions, and groups opposed to the Government or its policies. The press criticized the military and other powerful sectors. The press also regularly published stories on reputed drug traffickers, official corruption, and clandestine intelligence networks. There are seven major dailies published in the capital and approximately six local papers published outside the city.

The Government prepared public information programs that the radio and television stations were required to broadcast. The Government holds the rights to two national (VHF) television channels; however, neither broadcast any programs during the year. In March President Portillo announced a plan to turn over Channel 5 – nominally assigned to the army – to an institution representing civil society. In June the Government selected the Catholic Church to take over the channel; however, in July the Church declined the offer, saying its leaders lacked time and expertise to manage a television operation.

Despite its Peace Accords pledge to enact reforms to the Radio Communications Law to make radio frequencies available for indigenous communities, the Government instead created a public auction system for radio frequencies. Commercial operators generally outbid community groups, thwarting community access. Responding to complaints by commercial operators that some community stations were unlicensed "pirates" interfering with licensed frequencies, in February the Superintendency of Telecommunications announced a plan to fine and/or shut down unauthorized frequencies. In response, members of the Guatemala Council of Community Media appeared before Congress to ask for a guarantee that 25 percent of available frequencies would be assigned to community radio stations. Negotiations continued at year's end.

All four of the country's national television stations are owned by a Mexican citizen, Angel Gonzalez, who plays a significant role in politics. These channels were criticized strongly as being monopolistic, pro-government, and interested in broadcasting only uncontroversial news.

In March the President's Commission for Human Rights (COPREDEH) published the book "She Who Never Kept Silent," a collection of the writings of journalist Irma Flaquer who, before she was kidnaped in 1980, published a column titled "What Others Conceal" that was critical of atrocities committed during the conflict. In April the Government paid a settlement of approximately \$231,000 (1.8 million quetzals) to Flaquer's family. Publication of the book and the payment were stipulated as part of a 2001 settlement negotiated between the Government, the Inter-American Press Society, and Flaquer's survivors. There was no progress, however, in the investigation of the case, which was reopened by a special prosecutor in December 2001.

Death threats against journalists and other citizens critical of corruption were reported widely throughout the country. In December 2001, an editorial columnist for national daily "Siglo Veintiuno" left the country after receiving numerous e-mail and telephone death threats for his criticism of the Government.

On June 7, four journalists received a written anonymous death threat. The letter was addressed to a total of 11 individuals who are active in the promotion of respect for human rights (see Section 4).

Investigations continued in the September 2001 shooting death of Mynor Alegria Almendaris, host of Direct Line, a call-in program on Radio Amatique, in Puerto Barrios, Izabal. Alegria had accused officials and port authorities at Puerto Santo Tomas and the town of Puerto Barrios of embezzlement, bribery, and other abuses. On January 16, witness Erik Duarte accused the Mayor of Puerto Barrios, Mario Chigua Gonzalez, of having contracted Alegria's murder. On January 24, police detained Alegria's ex-girlfriend Olga Linares and her sister, Rosa, as possible accomplices. On April 19, a court revoked Chigua's immunity so he could be subjected to trial. In May Duarte retracted his statements, reported being threatened, and claimed that he was pressured into blaming Chigua. On July 2, authorities apprehended Jairo Gomez Sandoval for the murder. In July both Gomez and Duarte then testified that two other individuals, acting Mayor of Puerto Barrios Carlos Cantoral and local businessmen Erik Castaneda, had paid for Alegria's killing. On July 25, police captured a second suspect, Estuardo Orozco. On September 12, the High Impact Court of Chiquimula released Olga and Rosa Linares for lack of evidence.

In August 2001, Congressional deputies Anabella de Leon and Magda Arceo, along with the previous director of the National Printing Office, Sylvia Mendez, accused the director of the office and then and current Vice President Francisco Reyes Lopez of abuse of authority for allegedly ordering government printers to produce flyers criticizing Jorge Briz, the President of the Guatemalan Chamber of Commerce and a vocal critic of the Government. As a result of the ensuing investigation, the women received numerous death threats and Arceo, Mendez, and numerous other witnesses went into exile. Another witness was murdered on February 15 (See Section 1.a.).

In January the Supreme Court suspended a new Law of Obligatory Professional Association that was interpreted as requiring every working journalist to hold a journalism degree, belong to a professional association, and receive a government license. The Supreme Court determined that the law represented a violation of Constitutional guarantees of freedom of expression and association.

The Government does not restrict access to the Internet.

The Government does not restrict academic freedom.

b. Freedom of Peaceful Assembly and Association

The Constitution provides for the right of peaceful assembly and the Government generally respected this right in practice. Peaceful demonstrations were common. There were a variety of protests around the country to demonstrate opposition to a variety of issues, for example: corruption by high-level government officials, new taxes, the Government's inability to resolve land conflicts, community water access, and persecution of human rights activists. Among others, the disabled, those suffering

from HIV infection, former PAC members, street vendors, and war widows conducted demonstrations.

On January 15, the Guatemalan National Revolutionary Unity Party (URNG) prepared a counter-presentation to the President's report to Congress on the achievements of his first 2 years in office. FRG supporters, who were bussed to the site of the National Congress, arrived and allegedly beat URNG activists, burned their flags, and destroyed their platform. Members of the National Advisory for Youth, led by Juan Pablo Rios, grandson of Congress President and retired General Efraim Rios Montt, reportedly organized the attack and paid a musical group to drown out the URNG's protests. Police did not respond to calls for help. URNG Congressional deputies demanded that the FRG clarify its involvement in the event.

In March former guerrilla leader Alvaro Colom and retired General Otto Perez Molina formed the Civic Movement and organized several marches to protest government corruption. During the first and largest on March 13, the Secretariat of Communication ran a series of paid radio and television announcements discrediting the Movement.

Protests became violent on several occasions. Police generally acted with restraint; however, there were some allegations of unnecessary use of force. On May 23, transit police violently dislodged several food vendors from a street in Guatemala City, destroying tables and personal belongings and clubbing several people. On other occasions, security forces were unable to keep the peace. On June 10, between 5,000 and 20,000 residents of Tecpan, Chimaltenango, protested against the collection of a property tax. Demonstrators damaged several buildings, looted stores, and broke into the police station where they removed weapons and equipment, wounded 13 police officers, and took several hostages before reinforcements dispersed the crowd. On June 11, police arrested five indigenous protest leaders.

On August 22, groups of landless peasants seized highways for 10 hours to pressure the Government into meeting outstanding demands associated with land claims. Commerce was widely disrupted for several hours. The peasants ended the blockage shortly after a government spokesman announced initiatives to convoke dialogue with landowners and seek additional funds for the government land bank.

The Constitution provides for freedom of association, and the Government generally respected it in practice. However, there were credible allegations that the Government interfered with political associations.

On March 16, not long after completion of the registration requirements for Perez Molina's political party, the Patriot Party, several armed men shot and killed Jorge Rosal, a regional party leader (see Section 1.a.).

In April in the space of 24 hours, unknown persons broke into the offices of two opposition parties, the Unified Democratic Left and the Authentic Development parties. Computer equipment, paper files, and a map were stolen, although cash in an office drawer was not.

c. Freedom of Religion

The Constitution provides for freedom of religion, and the Government generally respected this right in practice; however, the Government has not implemented the 1995 Agreement on the Identity and Rights of Indigenous People, which provides for respect of spiritual rights of indigenous people. There is no state religion; however, the Constitution recognizes explicitly the separate legal status of the Catholic Church. The Government does not subsidize religious groups directly. However, during the year commercial radio operators charged that the ruling FRG was giving financial support to evangelical Christian radio stations in different areas of the country, presumably in exchange for future political support. Members of a religion need not register to worship together. However, the Government requires religious congregations (other than the Catholic Church), as well as other nonreligious associations and NGOs, to register as legal entities to transact business.

While there is no government policy of discrimination, a lack of resources and political will to enforce existing laws and to implement the Peace Accords limits the free expression of indigenous religious practice. Indigenous leaders state that Maya culture does not receive the official recognition it is due. The Government has not provided mechanisms for free access to ceremonial sites considered sacred within indigenous culture, nor has the Government provided for the preservation or protection of such ceremonial sites as archaeological preserves. Some indigenous groups consider the Government's use of sacred sites as revenue-generating tourist destinations to be an affront to their spiritual rights.

There was little progress in the ongoing appeals to the June 2001 sentencing of three military officers to 30-year, noncommutable sentences for the 1998 murder of Bishop Juan Gerardi, the Coordinator of the Archbishop's Office on Human Rights (ODHAG) (see Section 1.a.).

For a more detailed discussion see the 2002 International Religious Freedom Report.

d. Freedom of Movement Within the Country, Foreign Travel, Emigration, and Repatriation

The Constitution provides for these rights, and the Government generally respected them in practice.

Persons attempting to enter the country illegally were often subject to extortion and mistreatment by government officials. Many

observers believe this mistreatment is underreported because illegal immigrants almost never have the capacity to lodge formal complaints, either with the authorities or against them, and there is little legal assistance available to such immigrants. The Migrant's House, an NGO, reported that from 1997 to 2001, approximately 40 percent of the migrants they assisted reported some form of abuse.

The Government grants refugee status and asylum in accordance with the provisions of the 1951 U.N. Convention Relating to the Status of Refugees and its 1967 Protocol. The Government cooperates with the office of the U.N. High Commissioner for Refugees and other humanitarian organizations in assisting refugees from other countries. The issue of the provision of first asylum did not arise. There were no reports of the forced return of persons to countries where they feared persecution.

Section 3 Respect for Political Rights: The Right of Citizens to Change Their Government

The Constitution provides citizens with the right to change their government peacefully, and citizens exercise this right in practice through periodic, free, and fair elections held on the basis of universal suffrage for those 18 years of age and older. Ballots are secret. Members of the armed forces and police may not vote. Since the return to democracy and civilian rule in 1985, there have been nine free elections. International observers concluded that both the November 1999 general election and the December 1999 runoff presidential election were generally free and fair. Lack of transport, onerous voter registration requirements, and the scheduling of elections during the harvest season prevented many poor, indigenous, and rural persons from voting. A significant percentage of the rural poor population lacks the documentation needed to register to vote. Several campaigns exist to document citizens, particularly among the illiterate.

Voters elect the 113-member, unicameral Congress every 4 years using a system of proportional representation based on population, with deputies elected both from districts and from a nationwide list. Voter participation in the 1999 elections was at a 13-year high. Four parties and 2 coalitions won seats in the legislature, led by the FRG with a 63-seat majority, followed by the PAN with 21 seats, the Bancada Unionista with 16 seats, and the New Nation Alliance coalition, which includes the URNG, with 9 seats. Other small parties hold a total of four seats. Congress can and does act independently of the Executive; however, fragmentation along party lines and a weak staff and support structure result in a legislature that is relatively ineffective. Congress increased its relative power and independence under the leadership of FRG President of Congress and retired General Efraín Ríos Montt, a former *de facto* president.

In December 1999, voters elected FRG presidential candidate Alfonso Portillo in a runoff election that international observers characterized as free and fair. He took office in January 2000.

During the year, there were allegations that government officials made FRG membership a prerequisite for government employment and demanded that monthly contributions be made to the party coffers (see Section 1.f.).

There are no legal restrictions, and few practical ones, on the participation of women in the political process. In 2001 MINUGUA reported that only 69 percent of women of voting age were registered to vote, and that of this group only 33 percent voted. The major parties nominated and elected fewer female candidates for Congress in the 1999 elections. However, women's participation as voters was the highest ever, despite social traditions that inhibit voting by women. Voters elected 8 women to the 113-member Congress in 1999, and that number increased to 12 as substitutes took the seats of members of Congress recruited to serve in the executive branch. One woman, Zury Ríos de López, daughter of Ríos Montt, is the Second Vice President of Congress. Women hold two seats on the Supreme Court and one on the Constitutional Court. There were three female ministers in the Cabinet—the Minister for Culture and Sports, the Minister of Communication and Public Works, and the Minister of Economy. Less than 1 percent of the 330 mayors and less than 5 percent of the municipal officials in the country were women.

The Constitution provides for equal rights for indigenous people. Some attained high positions as judges and government officials, but indigenous people still are underrepresented significantly in politics due to limited educational opportunities and pervasive discrimination (see Section 5). There are two indigenous members in the Cabinet. While indigenous people make up 60 percent of the population, they represent only 1 of 12 ministers and 1 of 12 presidential secretaries. Of 113 members of Congress, 14 are indigenous. There are 113 indigenous mayors in the country, out of 331 municipalities, including Quezaltenango, the second-largest city. There were two indigenous ambassadors.

Section 4 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

The Government permits local human rights groups to operate without restriction, and numerous domestic and international groups investigate and report freely on human rights issues; however, during the year, many NGOs and human rights workers received threats or were intimidated by unidentified persons. Senior government officials met with numerous foreign government officials and international human rights monitors. Some government officials, however, questioned the credibility of both domestic human rights workers and international monitors. Many human rights workers believed this public disregard emboldened those who threatened them. While many international human rights organizations and their workers do not enjoy formal legal status, they continue to operate openly.

During the year, there was a marked increase in the number of threats against human rights workers, as well as against journalists and judicial personnel (see Sections 1.a., 1.e., and 2.a.). During the year, there were 154 acts of intimidation perpetrated against human rights workers. Most of these acts of intimidation involved anonymous telephonic or written threats, surveillance, and unknown individuals and cars following human rights workers or watching their workplaces or residences. Prosecutors, judges, and witnesses in various human rights cases, notably in the Myrna Mack case, also reported being the targets of various acts of intimidation (see Section 1.e.). Some of the attacks showed high degrees of sophistication and technical expertise.

Throughout the year, personnel in the Archbishop's Human Rights Office reported multiple death threats, surveillance, and other acts of intimidation. Some of the victims were those involved in the Gerardi case (see Sections 1.a. and 1.e.); others appear to have been targeted for their work putting the Historical Memory Report project in digital format for wider distribution.

On February 21, 11 individuals associated with forensic anthropology teams investigating mass graves from the armed conflict received a very specific and credible death threat. In the months that followed, several of those named in the death threat received intimidating phone calls, were accosted and threatened by armed men, and reported that their homes were under surveillance. At least four individuals fled the country. Also on February 21, a Catholic parish house in Nebaj that forensic teams had used to store equipment was burned to the ground. Experts concluded that it was arson. The parish priest, Rigoberto Perez, actively supported the work of the anthropologists and reported receiving death threats in the months that followed the fire.

On March 3, the Archbishop of San Marcos, Alvaro Ramazzini, received a death threat, presumably from individuals attempting to discourage his work in ministering to squatters who occupied local farms. Two weeks later, unknown persons raided his offices, scattered files, and damaged computer equipment.

On March 7, unknown persons broke into the offices of Casa Alianza and stole the files of 19 street children. A similar break-in had occurred in April 2001, when the files of 12 street children were stolen. Casa Alianza personnel also reported being accosted and threatened on several occasions during the year.

Prosecutors ended an investigation into the July 2001 incident in which an Amnesty International (AI) worker was found tied and gagged in her hotel in Guatemala City. Guatemalan authorities dropped the case after an investigation into a similar allegation in another country involving the same AI worker proved inconclusive.

On March 20, the offices of the Association for the Advancement of Social Sciences (AVANSCO) were broken into, although only a checkbook was stolen. The incident occurred a few days after the presentation of a report on post-conflict power structures linked to the military and former members of the Civil Defense Patrols in Huehuetenango and Quiche. In October 2001, the laptop computer of the report's researcher, Matilde Gonzalez Izas, was stolen from her home. In addition, Gonzalez received telephone threats and reported being followed.

On April 29, Guillermo Ovalle, an accountant for the Rigoberta Menchu Foundation (and nephew of its director), was shot and killed in a cafeteria near the Foundation's offices. While the incident contained some elements consistent with common crime, international human rights monitors did not rule out the possibility of a political motive, as threatening phone calls were made to the Foundation at the time of the killing and unknown individuals were reportedly seen watching the offices (see Section 1.a.).

On May 3, Domingo Yaxon, member of the Movement of Young Mayans and CONAVIGUA, was abducted and assaulted after leaving a human rights demonstration in front of the Presidential Palace. Yaxon was questioned about his work, threatened, tortured, and left unconscious in front of a funeral home (see Section 1.c.).

On June 7, 11 prominent human rights leaders and journalists received a death threat. The letter was addressed to the "enemies of the fatherland" and accused those listed of tarnishing the country's image with their "nonsensical talk." Human rights groups felt the attack was in retaliation for the focus the June visit of the U.N. Special Rapporteur for Human Rights Defenders had put on the existence of clandestine groups tied to the Government and their responsibility for the assaults against human rights workers.

On July 21, unknown persons broke into the offices of the National Coordinator for Human Rights (CONADEHGUA) and stole computers and communication equipment, as well as paper files relating to CONADEHGUA's research into the military's budget. The perpetrators left behind surveillance photos taken of CONADEHGUA's director (see Section 1.f.).

On September 6, the body of another member of CONAVIGUA was found in Joyabaj, Quiche. The body showed signs of torture (see Section 1.c.).

In March the Movement for Human Rights, an organization that unites some 25 human rights NGOs in common initiatives, petitioned President Portillo to bring an end to threats against human rights workers, assure their security, and investigate and dismantle the clandestine groups believed to be behind the intimidation. The Movement met with members of the Cabinet three times. While the Secretary for Strategic Analysis recognized the existence of such groups, the Minister of Interior and the presidential spokesperson publicly dismissed his findings. The Government failed to respond adequately to any of the demands, and the Movement announced it would not meet further until results were produced.

On May 29, the newly appointed Attorney General named Tatiana Morales Special Prosecutor for crimes against human rights workers. However, the office suffers from the same lack of resources the rest of the Ministry faces (see Section 1.e.).

The IACHR ordered the Government to provide police protection to the victims in the AVANSCO case and the forensic anthropologists. Although the Government complied, there was no significant progress made in any of the investigations, despite the fact that in some cases the police were given the telephone numbers or license plates of the perpetrators of the threats. In other cases, the Public Ministry claimed that effective investigations could not be carried out because the victims could not provide this information or speculate on the identity of the attackers.

MINUGUA reduced its presence significantly in preparation for a 2004 departure, but continued to monitor implementation of the human rights provisions of the Peace Accords and strengthen democratic institutions. MINUGUA stated that the Government generally cooperated with its investigations but cited occasional isolated incidents in which government officials or institutions had obstructed its efforts.

In May Hila Jilani, U.N. Special Rapporteur for Human Rights Defenders, arrived on a fact-finding mission. She noted a climate of fear that terrorized human rights workers. She stated that clandestine groups had become the principal threat to their safety and urged the Government to put an end to impunity and guarantee the protection of human rights workers. She commented on a lack of respect for their work on the part of public officials. President Portillo publicly dismissed Jilani's findings as representing a subjective, personal opinion. During a July visit, Santiago Canton, Executive Secretary of the IACHR and Susana Villagran, IACHR Rapporteur for Guatemala, echoed many of Jilani's concerns, and noted that the IACHR had been presented with more than 130 instances of threats against human rights defenders this year.

In June Congress elected a new Human Rights Ombudsman, Dr. Sergio Morales, from among three candidates chosen by the Congressional Committee on Human Rights. A coalition of more than 70 human rights organizations proposed and endorsed his election, which was considered a victory for civil society. The Ombudsman reports to Congress and monitors the rights provided for by the Constitution. The PDH's rulings do not have the force of law. The budget assigned to the PDH by Congress has historically been inadequate and is less than the amount reserved for the National Soccer Team. Relations between the Human Rights Ombudsman's office and MINUGUA, strained in the past, improved significantly after the start of the Morales' 5-year term in August. Upon the expiration of the MINUGUA's mandate, which is scheduled for 2004, the Human Rights Ombudsman's Office is to assume MINUGUA's human rights verification function.

COPREDEH is charged with formulating and promoting the Government's human rights policy, accepting government responsibility for past human rights abuse cases, and negotiating amicable settlements in those cases before the IACHR. Although some progress was made in completing obligations under prior agreements, such as in the Irma Flaquer case (see Section 2.a.), COPREDEH failed, under the conservative leadership of its director, Juan Fuentes Soria, to negotiate any new settlements during the year. In April COPREDEH presented a new executive policy on human rights. Civil society groups criticized the policy for its lack of operational vision and COPREDEH's failure to solicit and incorporate feedback from human rights organizations.

Section 5 Discrimination Based on Race, Sex, Disability, Language, or Social Status

The Constitution states that all persons are free and equal in dignity and rights, and that the State must protect the life, liberty, justice, security, peace, and development of all citizens. However, in practice the Government frequently is unable to enforce these provisions, due to inadequate resources, corruption, and a dysfunctional judicial system (see Sections 1.c. and 1.e.).

Societal prejudice against homosexuals was widespread. During the year there were at least five killings of homosexual male sex workers. There were no arrests made in any of the killings, and the police who arrived on the scene abused the victims' companions. Oasis, a support organization for homosexuals, characterized the killings as "social cleansing" and claimed that during the year homosexuals were frequently harassed by the police and often subjected to arbitrary detention (See Section 1.a.).

Women

Violence against women, including domestic violence, remained common among all social classes. The 1996 Law on Domestic Violence provides that the Prosecutor's Office, the national police, family courts, legal clinics, and the Human Rights Ombudsman's Office can receive complaints of domestic violence. Domestic violence is defined as "whatever action or omission by direct or indirect means causes damage, or physical, sexual, psychological, or patrimonial suffering" to a person within the family group. The law provides for the issuance of restraining orders against alleged aggressors and obligates the PNC to intervene in situations of domestic violence. Statistics vary significantly. The Prosecutor's Office reported receiving 8,060 complaints of domestic violence against women and children during 2001, 44 percent more than those received in 2000. Only 56 cases were brought to trial with convictions in 38 cases. A study completed in December 2001 by the Andar Foundation found that 77 of every 100 women suffer some form of domestic violence, and that the majority of women are not familiar with the laws that protect them and the institutions that can provide them with assistance. The PDH estimates that for every reported case, there are 10 more that are not reported.

Complaints of spousal abuse continued to rise due, at least in part, to increased nationwide educational programs, which have encouraged women to seek assistance. In 2001 the National Coordinator for the Prevention of Domestic Violence and Violence Against Women (CONAPREVI) released its National Plan for the Prevention of Domestic Violence. In May CONAPREVI reported that the Government had provided no political or financial support for the implementation of the plan. In June the Network Against Violence Against Women announced that the PDH is the only institution that has adopted a form developed to simplify the process of filing a domestic violence complaint with law enforcement authorities, despite a nationwide promotion effort.

The Law to Prevent and Sanction Intrafamily Violence requires the PNC to intervene in violent situations in the home. In July the press reported that in many cases the police do not respond to calls for help. The Political-Civic Convergence of Women reported that officers who do arrive often chastise female victims for behavior that provokes their husbands' ire. The Program for Prevention and Eradication of Intrafamily Violence, a government program under the Secretariat of Social Work of the First Lady, reported that it receives between 40 and 50 calls a day from battered women and children via its emergency hotline.

The office of the Ombudsman for Indigenous Women, led by Juana Catinac, provides social services for victims of domestic or social violence, as well as mediation, conflict resolution, and legal services for indigenous women. It also coordinates and promotes action by both government institutions and NGOs to prevent violence and discrimination against indigenous women; however, it lacks the human resources and logistical capacity to perform its functions on a national level. Since its creation in 1999, the office has been assigned the same budget each year: approximately \$256,000 (1,984,000 quetzals).

Sexual offenses and prostitution continued to increase. The Prosecutor's Office reported receiving 1,550 cases of rape and sexual assault during 2001. A total of 37 cases went to trial, with convictions in 25 cases. In April the Office of Attention to the Victim, a unit within the Public Ministry that offers psychological treatment to individuals who have been sexually abused, reported receiving an average of 67 new cases each month. The penal code does not include a description of sexual assault as a crime.

Victims rarely reported criminal sexual violence, although the number of complaints of such offenses continued to increase significantly. Many observers believed that increases did not reflect an increase in the number of rapes committed, but rather an increased willingness on the part of victims to come forward, greater public confidence in the police, and improved record-keeping of crime statistics. Despite these advances, relatively few rape cases went to court, in large part because police have little training or investigative capacity for such crimes, and because many rape victims were reluctant to report and prosecute such crimes. The law allows a rapist to be exonerated when the victim is at least 12 years old and agrees to marry him, but the Public Ministry must approve the marriage when the victim is below the age of 18.

The law does not prohibit sexual harassment, which is common in the workplace. Female domestic and maquila workers are particularly vulnerable (see Section 6.e.). In April four female court employees accused Judge Horacio Castillo Ceremeno, president of the Seventh Sentencing Court, of having repeatedly requested sexual favors. On April 13, the Judicial Disciplinary Board recommended that Ceremeno be fired. On July 25, the Judicial Career Council ordered his suspension for 15 days without pay.

Prostitution is not illegal. There are certain health code requirements for persons engaging in prostitution. The number of prostitutes increased during the year. Although no exact figures were available, the Life of Hope Foundation, which works with female prostitutes, estimated that there are 2,000 prostitutes working in the capital alone. Pimping and inducing a person into prostitution are crimes that can result in either fines or imprisonment, with heavier penalties if minors are involved. Trafficking in women, primarily for the purpose of prostitution, is illegal and a growing problem (see Section 6.f.).

The Constitution asserts the principle of equality between the sexes. Nonetheless, in practice women face job discrimination and are less likely to win management positions. The PDH estimates that women generally receive significantly lower pay than men; in many cases one quarter of the salary for the same work. Some women were subjected to preemployment pregnancy tests. Women are employed primarily in low-wage jobs in the textile industry, agriculture, retail businesses, and the public sector. More women than men are employed in the informal sector of the economy, where pay and benefits generally are lower. Women may own, manage, and inherit property on an equal basis with men.

More than half of indigenous women are illiterate. More than 50 percent of urban girls and 81 percent of rural girls drop out of school. According to the 2000-01 National Survey on Living Conditions, 70 out of every 100 adult women have never received formal education. In a 2001 study of human development, the UNDP reported that overall government spending on women's programs over the previous 3-year period was 0.5 percent of the national budget.

The Secretariat for Women's Affairs operates under the direction of the President, advising him on the coordination of policies affecting women and their development. The Secretariat's National Policy for the Promotion and Development of Guatemalan Women and Plan for Equal Opportunity 2001-06 identified and prioritized areas of critical need for women, such as access to health care and education to protection from domestic violence, but suffered from a lack of resources. During the year, it primarily focused on developing inter-institutional cooperation with existing programs.

In August the first 4 female SAAS civilian security agents graduated among a class of 64. During the year, there were 38 women out of a total of 404 students enrolled in the country's military academy. Ten percent of police officers are female.

Children

The Constitution charges the Government with protecting the physical and mental health, as well as the moral well-being, of minors. However, despite these provisions, the Government does not devote sufficient resources to ensure adequate educational and health services for children. Government spending on health remained stable, at approximately 1.6 percent of the country's GDP, while marginally increased resources were devoted to education, at approximately 2.6 percent.

A 2000 MINUGUA report found that 51 percent of the population is under 18 years of age. Of this group, 83 percent live in poverty.

The Constitution provides for compulsory education for all children up to the sixth grade. However, less than half the population actually receives a primary education, and only 3 of 10 students who begin primary school complete it. According to MINUGUA, one-fourth of all children do not attend school and 63 percent of those are indigenous girls. The average child receives 2.2 years of education. However, among indigenous children, the average drops to 1.3 years. Children in rural and indigenous areas are less likely to complete primary school. The Ministry of Education attempted to improve these statistics during the year by granting special scholarships to girls and working or orphaned children.

In December 2001, the Ministry reported that the overall level of school attendance had increased from 30 percent to 44 percent. On August 7, the Center for National Economic Investigation (CIEN) released a report on the progress of educational reform. The report recognized the Ministry's attempt to increase the number of children enrolled in primary school and promoted to middle school, but noted that dropout rates had increased; the high rate of illiteracy among women remained unchanged; and a very low percentage of resources was assigned to post-primary levels.

Since August 2001, a country-wide hunger crisis brought on by drought, the fall in coffee prices, and an overall lack of economic development claimed the lives of more than 100 children. An emergency census completed by UNICEF in 2001 reported that 14 percent of children suffered from acute and 71 percent from chronic malnutrition. Public health analyses showed that 60 percent of the cases of infant mortality and 76 percent of the cases of maternal mortality were preventable through attention to basic health and environmental measures that have been neglected. The Peace Accords, recognizing the systematic violation of children's right to health, called for a 50 percent reduction in infant and maternal mortality and a 50 percent increase in public health spending. Health coverage has increased since the signing of the Accords, but government commitments have begun to taper off. Approximately 1,340,000 women and children did not have access to basic health services during the year. Government resources devoted to public health decreased during the year. During the year, 7 percent of the National Budget was devoted to the health sector, compared with 10 percent in 2001.

Most estimates indicated that reports of child abuse continue to increase, although there are few statistics available to measure the problem. The Public Ministry reported 1,267 cases of child abuse in 2001, as compared to 1,126 cases in 2000. The majority of victims were between the ages of 2 and 10. A Permanent Commission for Children and Youth investigates cases of child abuse. The Social Secretariat for the Welfare of Children has oversight for the children's welfare programs, treatment and training for children, and special education assistance for children. The Secretariat provides shelter and assistance to children who are victims of abuse. However, due to lack of resources, these children sometimes are placed with other youths who have committed crimes (see Section 1.c.). In July the Minor's Court inaugurated the first educational program for parents whose children have been placed under protective status by the court in cases of parental abuse. The free, 4-month program offers training in human rights, self-esteem, drug abuse prevention, and domestic and sexual abuse. Thirty parents registered for the first session, and the court plans to offer the program on a year-round basis beginning in January 2003.

On February 8, the courts convicted prominent businessman Alfonso Ibarguen of multiple counts of rape of two girls in 1999, then aged 6 and 9, and sentenced him to 40 years' imprisonment. Marco Veliz, the children's stepfather, who delivered the children to Ibarguen in exchange for cash payments, was sentenced to 109 years. The two men were ordered to pay the victims a total of approximately \$320,000 (2.5 million quetzals). During the investigation and trial, Veliz and Ibarguen threatened the children's mother on several occasions, and she fled the country upon conclusion of the case.

On August 20, the outgoing Human Rights Ombudsman censured three priests who were accused of sexually abusing four children. The Catholic Church announced its intention to form a commission to investigate the incidents.

On April 5, authorities intercepted 7 public transport buses with 53 Salvadoran children who were being illegally smuggled to the United States. The authorities eventually assisted with an international operation that successfully broke up a smuggling ring originating in El Salvador.

Child labor is a problem. UNICEF estimates that 34 percent of all children work. The Government defines the "economically active population" as beginning at age six. In 2001 the Government initiated a program to eliminate the worst forms of child labor; however, the problem persists (see Section 6.d.).

The internal conflict left approximately 200,000 orphans throughout the country. Approximately 10,000 children are members of street gangs. Credible estimates put the number of street children at 6,500 nationwide, with about 4,000 of these youths concentrated in Guatemala City. More than 450 children have disappeared since 1996.

Abuse of street children remained a serious problem (see Section 1.c.). Casa Alianza estimated that the average age of a street child has dropped over the last 10 years from 13 years of age to 7. The average life expectancy of a street child is 30 years. The majority of street children ran away from home after being abused. Criminals—reported to include private security guards and corrupt police or military personnel—often recruited these children into thievery or prostitution and drug rings. In February Casa Alianza reported that between 1990 and 2001, an average of five street children were murdered each year. There has been little or no investigation in 80 percent of the cases. Individuals, private security guards, and other street children—not police or other government forces—committed most violence against street children. On June 20, unknown individuals shot and killed three children and wounded three others who were sleeping on a corner. On August 15, two men threw rocks at a street child who was sleeping on the roof of a market stall, crushing her skull. Social cleansing was a possible motive (see Section 1.a.). No arrests were made. On May 16, the Protection of Children and Youth Forum launched a public awareness campaign aimed at educating the populace about the societal ills that contribute to the problem of street children.

The Government and a number of NGOs operate youth centers; however, the funds devoted to them are not sufficient to alleviate the problem. The Government maintains one shelter each for girls and boys in Guatemala City. These shelters provide housing for the homeless and incarceration for juvenile offenders.

In February the U.N. Special Rapporteur on Children in Armed Conflicts, Olara Otunnu, expressed concern over the low level of state resources devoted to education, health, and nutrition for children. Otunnu also urged stronger government participation in the National Commission for the Search for Disappeared Children (see Section 1.b.).

On May 16, the Constitutional Court ordered Congress to set a date for the new Minor's Code to take effect. Casa Alianza and members of the Movement for Children had filed an injunction questioning the constitutionality of the February 2000 Congressional suspension of the implementation of the code. Congress, arguing that time was needed to develop the infrastructure for implementation, set an implementation date of December 1, 2003.

Persons with Disabilities

The Constitution provides that the State should protect persons with disabilities; however, persons with physical disabilities suffer discrimination in education and employment practices, and few resources are devoted to combat this problem. The PDH estimated that the disabled population is 1.7 million. These individuals have limited access to health care, recreational facilities, and work opportunities. Educational resources for those with special needs are scarce and the majority of the universities are not handicapped accessible. The National Hospital for Mental Health, the dominant health care provider for persons with mental illness, lacks basic supplies and equipment. Patients suffer from unhygienic living conditions and a shortage of medical professionals. Reports of sexual abuse by the staff are common. In June the press reported that only 30 percent of disabled children receive support from the Ministry of Education, which employs 150 teachers trained to work with the 4,500 children with disabilities who are registered in public schools. During the year, the Education Ministry began a public awareness program in public schools to overcome teachers' resistance to attendance by disabled students.

In 1996 Congress passed the Law for Protection of the Elderly and the Law on Attention to Disabled Persons, which mandates equal access to public facilities, prohibits discrimination based on disability, and provides other legal protections. The law defines a person with disabilities as one whose physical, mental, or emotional deficiencies limit performance of normal activities. It stipulates equal opportunity for persons with disabilities in health, education, work, recreation, sports, and cultural activities. It also provides that all persons with disabilities receive the benefits of labor laws and social security and have the right to work. In addition, the law establishes equal educational opportunities, the requirement that buildings meet access codes, and the right to equal pay. Government efforts to implement the legislation have been weak. While the National Council for the Disabled (CONADI), composed of representatives of concerned government ministries and agencies, met regularly to discuss initiatives, no resources have been devoted to the implementation of their recommendations. CONADI's petition for a permanent budgetary allocation from the Government was rejected. CONADI organized protests to demand that the Government follow through on its commitments to provide access to public institutions, spaces, and transit.

Indigenous People

The Constitution states that the country is composed of diverse ethnic groups and obliges the Government to recognize, respect, and promote the lifestyles, customs, traditions, social organization, and manner of dress of indigenous people.

Indigenous people constitute more than half the population; however, they remain largely outside the country's political, economic, social, and cultural mainstream. A 2000 U.N. report stated that 73 percent of indigenous persons, and 72 percent of those living in rural areas, faced an institutional lack of economic possibilities and limited access to basic services. According to UNDP, 90 percent of the indigenous are poor. The 1994 census, the most recent, found that 43 percent of the population is indigenous. However, most observers believe that this figure is low, and that indigenous people constitute a majority of the population. There is no single indicator of indigenous status, and there are at least 22 separate Mayan ethnic groups, each with its own language. In addition to the indigenous Mayan groups, there is an indigenous Xinca community of some 6,000 persons. The Garifuna, descendants of Africans brought to the Caribbean region as slaves who later migrated to South and Central America, are a separate minority group.

In 2000 when the Government designed a new 2000-04 timetable for the implementation of the Peace Accords, it was clear that the majority of the provisions regarding indigenous rights were incomplete. Among the initiatives still pending are educational

reforms that include bilingual and intercultural components, promotion of the use of indigenous languages, and the conservation and protection of ceremonial sites. On April 3, MINUGUA released a public statement lamenting the minimal advancement in the implementation of the Accord on Indigenous Rights 7 years after its signing.

Indigenous people were the most frequent victims of extrajudicial killings and other serious human rights abuses during the internal conflict. The commissions established to discuss the implementation of constitutional provisions relating to indigenous rights met during the year to formulate recommendations to the Government regarding protection of indigenous culture, languages, traditions, lands, and sacred sites. Indigenous people continued to organize themselves into interest groups to promote bilingual education, women's rights, and community development. Politically, the indigenous groups remained disunited, and there was little agreement among the groups on common goals or strategies to increase their political representation and power.

Rural indigenous people have limited educational opportunities and fewer employment opportunities. For this reason, indigenous men constitute a very high percentage of the military's ranks. Many indigenous people are illiterate or do not speak Spanish. A disproportionate number of indigenous girls do not attend school. The Government has devoted few resources to bilingual education, and the Ministry of Education has yet to implement the recommendations made by the Commission on Educational Reform. CIEN noted in its annual report on educational reform that some 900,000 children between the ages of 6 and 12 speak an indigenous language. Nevertheless, only 22 percent of this population received bilingual instruction. Only 12 percent of all teachers are bilingual. Since 1999 there have been no reports of schools denying children the right to wear traditional indigenous dress, a common complaint under the previous administration. However, on June 5, an indigenous leader was denied entrance to a restaurant in Guatemala City because she was wearing traditional dress. The owner of the establishment made a public apology and fired the offending employee, but indigenous groups cited the case as an example of the discrimination the indigenous face daily. The victim announced her intent to submit the case for consideration to the IACHR as an example of the historical, institutional, and structured racism that exists in the country. The Human Rights Ombudsman issued a moral condemnation to the restaurant's owner and recommended that Congress promote laws prohibiting and punishing all forms of discrimination.

Indigenous people arrested for crimes often are at a disadvantage due to their limited comprehension of Spanish. The Criminal Procedures Code states that the courts must provide interpretation for anyone requiring such services during criminal proceedings. Despite this, reports continued that indigenous people did not have equal access to the justice system. The Public Ministry concentrated 18 interpreters in former conflict areas of the country, and the Public Defender's Office employed 6 bilingual public defenders and assigned them to areas where they could serve as translators in addition to defending their clients. The Government made efforts to recruit justices of the peace who are bilingual in Spanish and an indigenous language. However, in 561 tribunals around the country there are only 62 judges who speak Mayan languages, and 22 court interpreters. Only 14 percent of police officers are indigenous. Better efforts were made to assign these officers to towns where their language skills can be put to use. Approximately 75 percent work in the geographic area of their particular linguistic competency.

In his December 2001 report, the U.N. Special Rapporteur on the Independence of Judges and Lawyers noted that access to justice for the indigenous community is "seriously defective" (see Section 1.d.). He specifically recommended that the Government take steps to incorporate indigenous custom and practice into national laws. On August 8, the Attorney General signed an accord promising to improve access to the justice system for the indigenous. Among the initiatives was the establishment of a Special Prosecutor for Indigenous Peoples to focus on cases of discrimination.

In July more than 25 representatives from civil society formed the National Roundtable Against Racism with the purpose of fostering an open, public debate on the problem and to seek solutions. Also in July, Mayan Defense, an NGO, began a 3-year education campaign to combat racism and discrimination. Again in July, various indigenous women leaders demanded the cancellation of the Rabin Ajau, an annual beauty contest among indigenous women that has taken place for 33 years and that receives government support. Previous participants and winners of the contest took part in the protest, explaining that the event had no roots in Mayan culture and that contestants were humiliated and prevented from speaking freely during the pageant.

In May the U.N. Special Rapporteur on Human Rights Defenders visited and expressed her concern over the increasing vulnerability of indigenous leaders to attacks (see Section 4). In September the U.N. Special Rapporteur for Indigenous Rights visited and commented that racism in country is "latent". On July 29 and 30, Pope John Paul II visited the country. In his public remarks, he lamented the situation of the indigenous and affirmed their right to respect, justice, and peace.

On October 3, the Government settled the century-old Los Cimientos land dispute. The Quiche community was relocated to a farm in Escuintla with \$3 million (23,250,000 quetzals) from the Presidential Secretariat for Agrarian Affairs. This resolution took place over a year after the Quiches had been forced out of Los Cimientos and into refugee camps in June 2001 by ex-civilian patrollers from their rival indigenous group.

Section 6 Worker Rights

a. The Right of Association

The Constitution and the Labor Code provide workers with freedom of association and the right to form and join trade unions.

However, in practice the Government does not enforce effectively labor laws to protect workers who exercise their rights. All workers have the right to form or join unions, including public sector employees, with the exception of members of the security forces. Approximately 3 percent of the work force is unionized. The Government does not control unions. There is no state interference in union activities; however, some believe internal intelligence services may monitor the activities of some politically active union leaders. In 2001 the Congress passed two sets of reforms to the national Labor Code that an International Labor Organization (ILO) direct contact mission noted "constitute a significant step forward in the application of Conventions Nos. 87 (freedom of association) and 98 (right to organize and bargain collectively), in that they repeal or amend many of the provisions criticized by the Committee of Experts." The reforms redefined the mission of the Labor Ministry from exercising "strict oversight to ensure unions operate legally" to guaranteeing "the free exercise of union rights." The reforms also permitted industrial or sectoral unions. Legal recognition of a new industrial union now requires that the membership constitute one-half plus one of the workers in an industry. Labor activists consider this requirement a virtually insurmountable barrier to the formation of new industrial unions.

The 2001 reforms accord initial jurisdiction over labor law violations to the Labor Ministry and set forth procedures for processing complaints, making initial determinations, and fining violators—new enforcement powers previously reserved to the labor courts. The Ministry of Labor may levy substantial fines for violations of labor rights; the Ministry claims to have levied more fines since May 2001 than the labor courts have collected in the 50 years of their existence. However, individual fines are generally low because companies can challenge Ministry fines in the labor courts. The labor inspection system remains ineffective and corrupt, despite continuing efforts at improvement. Low pay, the lack of a strong ethic of public service, and ineffective management prevent the Ministry from providing effective service.

Retaliation, including firing, intimidation, and sometimes violence, by employers and others against workers who try to exercise internationally recognized labor rights is common and usually goes unsanctioned. The ILO's Committee on Freedom of Association continues to monitor about a dozen allegations of serious violence between 1995 and 2000 against individuals for unionizing activities that lack credible investigations, prosecutions, or trials. In April 2001, an ILO Direct Contact Mission visited to investigate lack of progress in those investigations. In June 2001, the Public Ministry assigned a Special Prosecutor for Crimes Against Unionists and Journalists to review these and all new cases involving union members. Since its inception, the Special Prosecutor's Office accepted 80 cases involving union members, 31 of which remained under investigation at year's end. Only two suspects have been brought before a judge and one person has been detained. The remainder of the cases were found to be without merit by judges or by the Prosecutor's Office. Arrest warrants have been issued in only two cases. In October MINUGUA reported that labor leaders and unions had received 288 threats against them from January 1, 2000–September 15, including 158 death threats; 4 killings of unionists were registered during that period. Another such killing occurred in November.

The most common violation of freedom of association is the dismissal of workers for unionizing activity. Some workers who suffer illegal dismissal take their case to the labor courts and win injunctions of reinstatement. Appeals and re-appeals by the employers, along with legal ploys such as re-incorporation as a different entity, often prolong proceedings for years. The labor courts generally do not dismiss frivolous appeals, nor are their decisions enforced. According to Labor Ministry officials, the labor courts vindicate the majority of workers' claims against employers. However, employers comply with the court decisions in only a small number of cases, creating a climate of impunity. Often employers are not disciplined for not complying with legally binding court orders.

For example, in 1998 foreign firms contracted with DYMEI, S.A. to build a coal-fired power plant near San Jose, Escuintla. During construction of the plant, DYMEI's workers, most contracted for the duration of the construction phase of the project, formed a union. DYMEI then fired 72 union organizers without required court permission. The workers went to court and won a judgment reinstating them with back pay. After appeals by DYMEI, the verdict was upheld by the Constitutional Court in May 2001. Meanwhile, DYMEI had completed the project, reorganized to shelter itself from claims, and moved assets and operations to El Salvador. The workers began a sit-in on the doorstep of the presidential offices in late November 2001. In October the workers and DYMEI negotiated a financial settlement of worker claims. On October 7, 71 workers received a monetary reward to cover back wages and lawyers' fees.

Throughout the economy, employees were reluctant to exercise their right of association for fear of reprisal by employers. Workers had little confidence that the responsible executive and judicial institutions would effectively protect or defend their rights if violated. In addition, the weakness of labor inspectors, the failures of the judicial system, poverty, the legacy of violent repression of labor activists during the internal conflict, the climate of impunity, and the deep-seated hostility of the business establishment toward independent and self-governing labor associations constrained the exercise of worker rights. In 1999 MINUGUA's Fourth report on the Peace Process noted that "genuine trade union freedom does not exist" due to anti-union violence. It also reported a significant gap between the problems regarding workers' rights and the resources applied by the Government to solving these problems.

Nobody has been charged for the December 2001 murder of Baudilio Cermeno Ramirez, the Organization Secretary of the Light and Energy Union.

Investigation of the 2000 killing of Oswaldo Monzon Lima, the secretary general of a fuel drivers' union, continues without results.

Labor leaders reported receiving death threats and other acts of intimidation. In its September report on human rights,

MINUGUA reported threats to the head of the immigration workers' union and the UNSITRAGUA labor federation, as well as the attempted shooting of the leader of the municipal workers union of Nueva Concepcion, Escuintla. On November 27, the bodies of Carlos Francisco Guzman Lanuza, the Secretary General of the Municipal Employees Union of Nueva Concepcion and leader of a union of South Coast workers, and his brother were discovered on a highway near Nueva Concepcion, Escuintla province. They died from multiple bullet wounds. According to MINUGUA, since 2001 Nueva Concepcion had been plagued by violence from armed groups associated with the mayor, Augusto Linares Arana. The investigation of the case by the Special Prosecutor for Crimes Against Unionists had produced no arrests at year's end. The General Central Union of Guatemalan Workers (CGTG) described death threats and other forms of intimidation received by a member of the municipal union of Chichicastenango, another member of commercial workers' union of Chichicastenango (both from municipal officials), by two leaders of the Professional Heavy Truckers Union, and by the leader of the municipal union of Puerto Barrios. On May 13, the adult son of the leader of the National Federation of Public Servants (FENASEP) was killed in the capital. The CGTG claims that none of these acts has been investigated adequately.

An active "solidarismo" movement claims to have approximately 170,000 members in about 400 companies. Unions may operate legally in workplaces that have solidarity associations, and workers have the right to choose between the two or to belong to both. The Government views these associations as civic organizations that need not interfere with the functioning of trade unions. The Labor Code stipulates that trade unions have an exclusive right to negotiate work conditions on behalf of workers. However, unions charge that management promotes solidarity associations to avoid the formation of trade unions or to compete with existing labor unions. Representatives of most organized labor groups criticize these associations for not permitting strikes, having inadequate grievance procedures, and for displacing genuine, independent trade unions with an employer-dominated structure. There were credible reports that some associations did not adhere to democratic principles.

The administrative process for unions to obtain legal status has been simplified over the past decade. In 1996 the Ministry of Labor reduced the number of steps needed to adjudicate union applications and mandated a deadline of 20 workdays for reaching a decision. Labor Code reforms adopted in 2001 authorized the Labor Ministry to establish a free legal assistance service for workers who desire to unionize, contained provisions designed to simplify further the Ministry's application and recognition process, and strengthened union members' ability to demand transparency in union activities. In 2001, the last year for which complete official data is available, the Labor Ministry granted legal status to 48 unions. At the end of 2001, there were 1,481 registered unions (742 considered "active"), with 119,471 members. Unofficial sources claim that by mid-year, that number had increased to 1,506 registered unions with 120,953 members.

The registered unions were generally independent of government and political party domination.

The two unions at the Choi Shin/Cimatextiles maquila plants where anti-union violence occurred in July 2001 have not been able to achieve membership of 25 percent of workers to compel collective bargaining. During the year, management claimed to have instituted voluntarily a process of regular dialogue with the unions to prevent further conflicts.

Many violations of the right of association and other labor rights occurred in the public sector. In September 2001, MINUGUA highlighted cases of intimidation, threats, and illegal firings of municipal workers by public officials in Cuilapa, Santa Rosa; Guastatoya, El Progreso; Tecpan, Chimaltenango; and La Gomera, Escuintla. In addition, the management of Ministry of Health hospitals in the capital and in Cuilapa, Santa Rosa refused to recognize union leaders or tried to replace them with others, and the Ministry had not complied with terms of a collective bargaining agreement negotiated by the previous administration. In its September human rights report, MINUGUA verified anti-union practices within the Office of the Comptroller General, who spoke openly of his intention to dismantle two unions. In August doctors in the major public hospital in the capital stopped work and forced the Social Security Institute to agree to pay back wages with increases.

The Labor Code provides for the right of employers to fire union workers for cause, permits workers to appeal their dismissal to the labor courts, and requires the reinstatement within 24 hours of any unionized worker fired without cause. The Labor Code also prohibits employers from firing any member of the executive committee of a union and also protects them for 12 months after their terms end. An employer may fire a member of the union's executive committee for cause only after a trial in a labor court and issuance of a court resolution. Even in clear-cut cases of illegal firings, labor laws have not been enforced adequately.

Despite governmental, bilateral, and multilateral efforts to restructure and modernize the labor court system, the system remained ineffective. There are 20 labor courts; 7 in the capital and 13 located elsewhere around the country. An additional nine courts address labor issues, primarily appeals, as part of their jurisdiction. The weakness of the judicial system as a whole, the severe shortage of competent judges and staff, a heavy backlog of undecided cases, and failure to enforce effectively court rulings all contribute to the labor courts' lack of credibility and effectiveness. The small number of competent and motivated labor inspectors and the lack of training and resources devoted to detecting and investigating Labor Code violations compound the weakness of the labor courts. UNICEF, the ILO, and MINUGUA continue to urge the Government to speed up the administration of justice to ensure the strict enforcement of labor laws. In 2001 MINUGUA singled out the Third Judge for Labor for egregious delays in legal procedures stemming from a dispute involving a bank workers union dating to 1997. The judge took more than 3 years to convoke the parties before a conciliation tribunal, which should have taken place within 36 hours.

Government efforts to improve the labor inspection system, begun in 2000, continued with international support. After substantially expanding the size of the inspector corps in 2000, the Ministry of Labor increased its rate of inspections and fired some incompetent or corrupt inspectors. The Ministry also launched with MINUGUA assistance a permanent training program for inspectors, created new individual performance indicators for inspectors, began to computerize inspection reports,

cooperated with an ILO study on inspection norms, and enlisted union and employer support for the creation of national and departmental consultative councils to discuss Labor Inspectorate operations.

Under the revised Labor Code, complaints can be heard at the Ministry of Labor rather than requiring that inspectors travel to each work site. The Ministry also instituted a set of complaint assistance, small claims mediation, and information-providing initiatives designed to provide better services to workers. The Ministry continued its educational campaign on worker rights (especially the rights of minors and women), which included a campaign of radio spots and the provision of some educational materials in indigenous languages. In an effort to improve enforcement of the Labor Code outside the capital, the Ministry of Labor continued to decentralize its operations. Seven of the Ministry's offices have been accorded regional authority. These regional offices, in addition to labor inspectors, also include specialists in women and workplace issues, management-worker relations/conflict resolution, and minor workers/child labor issues. The Labor Ministry plans to give these regional offices supervisory authority over branch offices in the departmental capitals of each region.

MINUGUA and the Human Rights Ombudsman's office of the Defender of Worker Rights take complaints related to violation of internationally recognized worker rights. The Human Rights Ombudsman's Office can investigate union complaints and issue a statement; however, the office has no enforcement powers beyond attempting to resolve the situation through publicity and persuasion. The Ombudsman made public statements about labor conditions in various sectors of the economy.

Unions may and do form federations and confederations and affiliate with international organizations.

b. The Right to Organize and Bargain Collectively

Workers have the right to organize and bargain collectively. However, the small number of unionized workers limits the practice of collective bargaining. The prevailing business culture ignores labor contracts because, in practice, they are largely unenforceable due to the weak, cumbersome, and corrupt legal system. Labor Code reforms adopted in 2001 reduced from two-thirds to one-half plus one the number of union members required to approve a collective bargaining agreement. The ILO Committee of Experts had called for this change. The ILO also noted other reforms necessary to provide for full exercise of the right to organize and bargain collectively.

Other factors limiting the practice of collective bargaining include the requirement that 25 percent of the workers in a factory or business must be union members for collective bargaining to take place, lack of experience, and management's aversion to sharing power with workers. Management and labor honored collective contracts at some firms. In others, management, and sometimes labor, chose to ignore selected provisions of binding collective bargaining agreements. According to the Ministry of Labor, 22 collective bargaining agreements were registered in 2001. A total of 144 agreements were reached between 1997-2001, according to the most recent official data. The greatest number of agreements were reached in the social services (44) and industrial manufacturing (43) sectors. Most workers, even those organized in trade unions, do not have collective contracts documenting their wages and working conditions, nor do they have individual contracts as required by law. According to a 2000 study by the Association for Research and Social Studies, only 10 percent of workers have a contract duly registered with the Labor Ministry as required by law.

A February government decree prohibits the executive branch from allowing any salary or other monetary benefits to increase under any collective bargaining agreement. Labor groups have criticized this policy and vowed to challenge its constitutionality under ILO Convention 98.

The Labor Ministry has worked to promote the restructuring of labor relations in enterprises by encouraging labor-management cooperation and to bring about a "culture of negotiation" as called for by the Peace Accord on Socioeconomic Aspects and the Agrarian Situation. Despite these efforts, productive, good faith negotiations between employer and worker representatives have been the exception rather than the rule. The majority of unions that engaged in collective bargaining during the year reported that some employers continued to reject the underlying premise of collective bargaining—that power in the workplace can be shared according to a contract between the employees and company management for the benefit of both.

The law protects workers from retribution for forming unions and for participating in trade union activities, but enforcement of these provisions is weak. Many employers routinely seek to circumvent Labor Code provisions to resist unionization. An ineffective legal system and inadequate penalties for violations have hindered enforcement of the right to form unions and participate in trade union activities in the past and perpetuates the violence that workers face if they attempt to exercise their rights.

The Labor Code prohibits employers from firing workers for union organizing and protects them from being fired for 60 days following notification to the Labor Ministry that a union is being formed. Thereafter, they can be fired for cause, unless they are members of the union's executive committee. During labor conflicts, unions frequently seek a labor court injunction, which prohibits firing without approval of a judge until the conflict is resolved (277 such injunctions were filed in 2000, according to the most recent official data). Although the Labor Code provides that workers fired illegally for union activity should be reinstated within 24 hours, in practice employers have filed a series of appeals or simply defied judicial orders for reinstatement. The Labor Code reforms adopted in 2001 significantly increased by 10 to 50 times the minimum monthly wage-penalties for defying such orders. However, effective utilization of these enhanced enforcement powers of the Ministry of Labor has proved difficult. The Labor Ministry, and its corps of labor inspectors in particular, continues to suffer from a lack of respect from employers, inadequate resources, and corruption (see Section 6.a.). The Labor Ministry reported issuing 4000 fines to 202 employers,

totaling \$70,279 (544,665 quetzals). According to the Ministry, this total of fines on employers amounts to ten times what the labor courts had issued in the past 50 years of their existence. An additional 3,798 additional cases were being processed at year's end.

During the year, routine labor inspections increased to 24,632, from 20,613 in 2001. Inspections based on a specific complaint reached 4,820.

Workers have the right to strike. However, the very low level of unionization and procedural hurdles make legal strikes rare. The reforms adopted in 2001 rescinded the provision—long noted by the ILO as an unwarranted constraint on the right of association—that prohibited seasonal agricultural workers from striking during harvest time. The 2001 Labor Code reforms also reduced from two-thirds to one-half plus one the number of a firm's workers required to call a legal strike. The Labor Code requires that a labor court consider whether workers are conducting themselves peacefully and have exhausted available mediation before ruling on the legality of a strike. The 2001 Labor Code reforms created new procedures that workers in essential services (health, utility, and communications) must follow to exercise legally the right to strike; however, other changes in the Labor Code gave the President and his cabinet the power to suspend any strike deemed "gravely prejudicial to the country's essential activities and public services." Employers may suspend or fire workers for absence without leave if authorities have not recognized their strike as legal. The strike regulation law calls for binding arbitration if no agreement is reached after 30 days of negotiation. For a strike to be declared, a workplace election must be held, and 50 percent plus 1 person present, including workers and management, must vote in favor of the strike. The union then must petition a labor court for permission to strike. The judge calls the petitioners and employer representatives before the court and forms a Conciliation Tribunal to seek resolution of the conflict. If no agreement is reached, the parties can go to binding arbitration, or the judge may rule on the legality of the strike. In practice, this can be a lengthy process, and few requests for strikes are upheld.

There was one legal strike during the year. On July 5, the union of municipal workers of Jalapa went on strike for 15 days. They returned to work after the mayor pledged to honor union demands. Other unofficial work stoppages were held by labor groups in the banana sector, health sector, and others throughout the year. Landless peasant groups blocked national roads to press the national government for more attention to their demands for land.

Labor laws and regulations apply throughout the country, including the few export processing zones (EPZs). (Maquilas that make garments for export operate under an EPZ-like regime, although they are not located in distinctly established areas.) The laws governing the EPZs do not infringe on fundamental rights to organize trade unions or bargain collectively. However, there are no collective bargaining agreements between employers and any of the more 100,000 workers in the for-export zones and maquila sector. Union leaders' inability to organize workers in these zones is caused by employer intimidation and pressure as well as unofficial restrictions on their access to the EPZs.

c. Prohibition of Forced or Bonded Labor

The Constitution bars forced or bonded labor; however, women are trafficked for the purpose of sexual exploitation (see Section 6.f.). Trade union leaders and human rights groups charge that employers sometimes forced workers to work overtime, often without premium pay (see Section 6.e.). The law does not specifically prohibit forced or bonded labor by children; however, they are covered by the general constitutional provision. Forced or bonded labor by children generally did not occur.

d. Status of Child Labor Practices and Minimum Age for Employment

The Constitution bars employment of minors under the age of 14 without written permission from the Ministry of Labor. However, the informal and agricultural sectors regularly employ younger children, usually in small family enterprises. Economic necessity forces most families to have their children seek some type of employment to supplement family income, especially in rural and indigenous communities. In 2000 MINUGUA found that 34 percent of children 7 to 14 years of age work. Most minors work at household chores, in subsistence agriculture, in family-run enterprises, and elsewhere in the informal economy.

According to a special survey by the National Statistics Institute completed in 1999, from 1998 to 1999 there were 326,095 children doing paid work, and 495,780 doing chores in the home. An estimated 80 percent of work accidents involve 15-to-18-year-old workers who lack proper safety training. The law prohibits minors from night work and extra hours (the legal workday for minors younger than 14 is 6 hours; for minors 14 to 17 years of age, it is 7 hours); from work in establishments where alcoholic beverages are served; and from work in unhealthy or dangerous conditions.

The ILO's International Program on the Elimination of Child Labor is active in the fireworks industry and opened a pilot facility for safe production of fireworks without child labor in July. The Labor Ministry estimated that approximately 10 percent of the children in this industry work illegally in factories, while younger children, under the age of 14, typically work at home on piecework taken in by their families. Accidents occur regularly in the informal cottage fireworks industry. According to press reports an average of 25 persons per year, the majority minors, suffer burns and amputations from accidents in the fabrication of fireworks. Between 3,000 and 5,000 children were employed in the illegal cottage-based fireworks industry.

The ILO also sponsors programs to eliminate child labor in the production of gravel and certain agricultural sectors.

Laws governing the employment of minors are not enforced effectively, due to the weakness of the labor inspection and labor

court systems. The Association for Girls and Boys in Central America estimates that approximately 2 million children work in the region. The majority of child laborers work in agriculture (family farms, coffee, and sugar cane harvesting), while others work in domestic service, construction, family businesses, stone quarrying, rock-breaking, fireworks manufacturing, shining shoes, begging, performing in the streets, or other jobs. In 2001 the Ministry approved 1,014 permits for minors under 14-years-old. Many children under the age of 14 work without legal permission and are vulnerable to exploitation. Their illegal status makes them ineligible to receive social benefits, social insurance, vacations, or severance pay, and they often earn salaries below the minimum wage.

In October the ILO reported that the number of child workers has increased to 937,530, and that 38,878 of those are under 18 years of age and working as domestics in private homes in conditions of modern slavery. The ILO report studied 150 child domestic workers in Guatemala City and 100 in the southeastern city of Jutiapa. Forty-five percent of those interviewed were between 6 and 13 years old. The report asserts that the total number of child and adolescent domestic workers in the provinces of Guatemala and Jutiapa totals 10,433, the overwhelming majority of whom (10,144) are female. In the capital, the majority of children (74 of 100) worked 13 to 16 hours a day, and their average monthly salary is approximately \$51 (395 quetzals). Monthly wages were even lower in Jutiapa, where 60 percent of those interviewed worked less than 6 hours per day; however, they work for more than 1 household. Many suffered psychological mistreatment, including sexual abuse.

In May the ILO released a report entitled "Child Labor in Garbage Dumps: A Rapid Evaluation." The report is the result of 167 interviews with garbage pickers in the capital. Seventy percent of those interviewed were between 7-18 years old. More than half of those interviewed under 13 years old do not attend school. The figure was higher (74 percent) for those between 14-18 years old. Eight percent of those interviewed lived on the dump, and 32 percent lived nearby. The child workers suffer a variety of physical maladies associated with their work.

The Child Worker Protection Unit within the Ministry of Labor enforces restrictions on child labor and educates minors, their parents, and employers on the rights of minors in the labor market. In 2000 the Ministry of Labor, with the support of a group of NGOs, finalized a National Plan for the Prevention and Eradication of Child Labor and Protection of Adolescent Workers, which was approved by the Cabinet in 2001. In 2001 the Ministry launched a national campaign to eliminate the worst forms of child labor, and in November President Portillo announced the creation of a new National Commission for the Elimination of Child Labor which will coordinate ministerial collaboration on implementation of the National Plan to Eradicate Child Labor.

The labor law does not specifically prohibit bonded labor by children; however, the Constitution prohibits forced or compulsory labor. Bonded labor by children generally did not occur; however, children were trafficked into prostitution (see Section 6.f.).

e. Acceptable Conditions of Work

Although the law sets minimum wages, noncompliance with minimum wage provisions in the rural and informal sectors is widespread. A May 2001 government survey of employment and income revealed that only 60 percent of the working population received the minimum wage or more. As minimum wage provisions have become more complex through inclusion of a monthly "incentive bonus", and as the minimum wage has risen during the year and with a deepening economic crisis affecting the coffee-growing sector, noncompliance with the law, which was already high, has risen. Advocacy groups that focus on rural sector issues estimate that more than half of workers engaged in day-long employment in the rural sector do not receive the wages, benefits, and social security allocations required by law. Minimum wage laws do not extend to domestic workers.

The Ministry of Labor oversees a tripartite committee that makes recommendations for increases in the minimum wage. In the event that agreement is not reached in the tripartite commission, the Government may decree such increases based on recommendations of the Labor Minister. The 2000 Labor Code reforms placed responsibility for drafting the decrees setting new minimum wage levels, should there be no consensual proposal submitted by the tripartite commission, on the Labor Ministry. On January 1, a minimum wage increase, promulgated by executive branch decree after the tripartite commission was unable to reach a consensus, took effect. This decree raised the minimum daily wage for agricultural work by \$0.31 (2.42 quetzals) to \$3.52 (27.50 quetzals). It raised the minimum daily wage for service, industrial, and government sector work by \$0.29 (2.33 quetzals) to \$3.85 (30.00 quetzals). In August 2001, the Government decreed a mandatory monthly bonus for all workers of \$31.25 (250 quetzals) from a previous level of \$20.20 (162 quetzals) for agricultural workers and \$19.30 (154 quetzals) for nonagricultural workers.

The minimum wage was not sufficient to provide a decent standard of living for a worker and family. According to the UNDP, at least 80 percent of the population, including approximately 60 percent of working population, lives below the poverty line. The Ministry of Labor conducts inspections to monitor compliance with minimum wage provisions; however, the Ministry of Labor lacks the resources to enforce adequately the minimum wage law.

An estimated 70 percent of workers are in the informal sector, and are therefore completely without labor protections. Only 21 percent of workers were covered by the National Social Security System (IGSS) in 2000, according to the Labor Ministry.

The legal workday is 8 hours and the workweek is 44 hours; a tradition of longer hours remains in place in certain sectors. These limits do not apply to domestic workers. The Labor Code requires a weekly paid rest period of at least 24 hours. Trade union leaders and human rights groups charge that employers sometimes forced workers to work overtime, often without premium pay. Labor inspectors report uncovering numerous instances of such abuses, but the lack of stiff fines or strong

regulatory sanctions, as well as inefficiencies in the labor court system and enforcement of court orders, have inhibited adequate enforcement of the law.

Occupational health and safety standards are inadequate. During the year, as part of its effort to address this situation, the Ministry of Labor participated in a number of regional international initiatives intended to sensitize employers and workers to health and safety risks in the workplace. The Labor Ministry provides training courses for labor inspectors in health and safety standards, and has given such training priority despite scarce resources. In August the Minister unveiled a National Plan for Occupational Health and Safety developed through tripartite participation.

Nevertheless, enforcement of occupational health and safety standards remains weak. When serious or fatal industrial accidents occur, the authorities often fail to investigate fully or assign responsibility for negligence. Employers rarely are sanctioned for having failed to provide a safe workplace. However, in the past, the authorities suspended one maquila operation for safety shortcomings and threatened about a dozen others with a suspension of operations if they failed to improve safety conditions. Legislation requiring companies with more than 50 employees to provide on-site medical facilities for their workers has not been well enforced. However, most large employers did provide such facilities for their employees. The fireworks industry is particularly hazardous (see Section 6.b.). Workers have the legal right to remove themselves from dangerous work situations without reprisal. However, few workers are willing to jeopardize their jobs by complaining about unsafe working conditions.

A January report by the Women's Rights Division of HRW alleged that women workers, especially in the domestic and maquila for-export manufacturing sector, suffer from high rates of discrimination and sexual harassment. One-third of a sample of 29 domestic workers reported sexual harassment at work, according to the report. Labor law exempts domestic workers from the right to an 8-hour workday and the 44-hour workweek, provides domestics only limited rights to national holidays and weekly rest, and denies domestics the right to employee health care under the national social security system. While the labor code stipulates that all workers have the right to the minimum wage, domestic workers are denied this right by executive decree.

The report alleged that maquilas often force women to reveal whether they are pregnant as a condition of employment, either through questions on job applications, in interviews, or through physical examinations. Approximately 80 percent of the 100,000 maquila workers are women.

f. Trafficking in Persons

The law specifically prohibits trafficking and smuggling of persons; however, trafficking in women and children is a problem. The country is a source and transit country of women and children trafficked for the purpose of sexual exploitation. There is also internal trafficking and in some cases, the country is a destination country for trafficked victims. Trafficked persons come mainly from other Central American countries and Ecuador. Victims trafficked to Guatemala are usually young women or children who are trafficked for sexual exploitation. Most of the minors brought to the country are trafficked for sexual exploitation and placed in poor surroundings and paid low salaries. A 1999 study by the NGO Pro-niños, Niños Centro Americanos (PRONICE) suggests that fraud and threats are a common form of recruitment. Usually traffickers choose pretty girls who come from poor families. The most common "contracting places" are along the borders. Those trafficked from Guatemala for sexual exploitation are usually minors, both boys and girls, from poor families. The traffickers often approach these individuals and offer them lucrative jobs, which would allow them to make regular remittances back to their families. The methods of approach include promises of economic rewards, jobs in cafeterias or beauty parlors, or jobs in other countries. The means of promotion include flyers, newspaper advertisements, and verbal or personal recommendations.

NGOs and the press credibly alleged that some Immigration Service officers accept bribes in return for allowing traffickers to bring children into the country for purposes of sexual exploitation.

The Government is making efforts to combat trafficking despite resource constraints and endemic corruption. The law specifically prohibits trafficking and smuggling of persons. The Government investigates trafficking cases; however, there have been no prosecutions of trafficking cases since victims often fail to press charges due to a cumbersome judicial system and fear of reprisal. Prison sentences for traffickers are commutable to fines. The Government does not assist or protect victims of trafficking, although victims are not treated as criminals. However, Casa Alianza reported in May that nine trafficked minors found in a brothel were temporarily jailed by authorities "for their own protection." The Government has conducted antitrafficking and antismuggling public awareness campaigns, and it provides limited funding to NGOs dedicated to preventing trafficking.

The Defense of Children's Rights unit in the Human Rights Ombudsman's Office and the Minors' Section of the Prosecutor's Office investigate cases of trafficking. Officials in the Labor Ministry also raise the issue with the police and social welfare agencies as part of their efforts to combat child labor and child exploitation. NGOs that focus on women and children's rights often help victims of trafficking and work to educate the population about the dangers of trafficking.

The country is a significant transit and source country for alien smuggling, both from neighboring Central American countries as well as Ecuador, China, Taiwan, and South Asia. Some aliens are trafficked to the United States. Traffickers use force, coercion, fraud, and deception. In one instance, Chinese male victims apparently agreed to debt bondage to pay off their transportation costs, while female victims, some of whom were under age 18, apparently were being taken to the United States to work as prostitutes. The victims were told that their families in China would suffer if they broke the debt bondage agreement.

Sexual exploitation of children is a growing problem, including child prostitution and the trafficking of children for purposes of prostitution. In June Casa Alianza estimated that there were more than 15,000 sexually exploited boys and girls in the country, many working in the more than 600 bars and night spots in Guatemala City. The report also noted an increase in visitors to the country for the purposes of child sex tourism. Child prostitution is especially a problem in the capital and in the towns of Escuintla, Tecun Uman, and Coban. There continues to be a rise in child prostitution in towns along the borders with Mexico and El Salvador. Child migrants who fail to cross the border into Mexico often remain in the country and resort to prostitution to survive. Many children are also brought into the country from El Salvador, Nicaragua, and Honduras by organized rings that force the children into prostitution (see Section 6.f.). Laws protecting children from sexual exploitation are weak. Victim protection programs are nonexistent, and children who are taken into custody are often treated poorly by authorities and deported. In July police jailed nine children, some as young as 14, who were trafficked from El Salvador to work in brothels. The police released them after Casa Alianza offered to provide the victims with counseling, housing, and repatriation.

In 2001 the Social Secretariat for the Welfare of Children, in conjunction with a commission of NGOs and other government ministries, presented the National Plan of Action against Sexual Exploitation of Children in Guatemala. The plan is an initiative to fight child prostitution and pornography, trafficking of children, and sex tourism. The Government, however, has not yet committed the financial resources to implement it. In April the authorities apprehended a Canadian citizen who, while living in a rural indigenous community, took pornographic photographs of minors for export to Canada.

The U.N. Special Rapporteur on the Sale of Children, Child Prostitution, and Child Pornography visited the country in 1999, and noted a marked increase in child prostitution in the towns along the borders with Mexico and El Salvador. Along the border with El Salvador, many child prostitutes were brought into the country from El Salvador, Nicaragua, and Honduras by organized rings. In its 1999 annual report on the state of children, the Archbishop's Human Rights Office identified the growing problem of child prostitution as inextricably linked to that of trafficking in persons, noting that no child prostitute got there alone.